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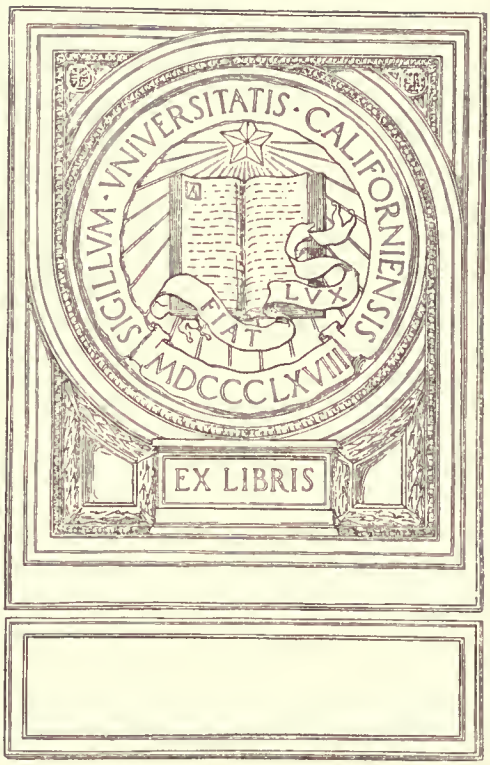
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JAMES WILSON — NATION BUILDER[1]

By Lucien Hugh Alexander

PART II

THE Declaration of Independence a reality, Wilson's energies, with those of all the patriot fathers, were at once concentrated upon the herculean task of making that Declaration effective and Independence a reality.

Wilson was among the first to recognize the necessity for efficient military organization; and we can understand that the example of the strenuous Professor Ferguson at Edinburgh in urging the importance of a Scotch militia[2] had a powerful influence upon his course. For more than a year in advance of the Declaration of Independence he had taken an active part in organizing a militia in Pennsylvania — "Associators," as they were called — and early in 1775 he raised a battalion of troops in his home county, Cumberland, receiving his commission as colonel of the same on May 31, 1775, and with which, in 1776, he took part in the New Jersey campaign. But the urgent calls for his services in Congress compelled him, as one of the chief executive officers of the government, to devote himself to civil duties there. At that time, as is well known, Congress through committees discharged the executive duties which now devolve upon the President of the United States and his cabinet officers; and the Board of War, of which Wilson was an original member, really served in the capacity, as the President now does, of commander-in-chief of the army and navy. Such a system was cumbersome, responsibility was divided and could not readily be fixed. Wilson's realization of its essential weaknesses in practical operation no doubt led him to propose a single executive for the nation in the great Constitutional Convention of 1787, and to insist upon it with all the vigor he possessed "as giving the most energy, dispatch, and responsibility."

[1] Continued from the January number.

[2] P. 5 *supra*.

The record of James Wilson's services during the early years of the Continental Congress is buried in the original documents of the period. Historians have but little more than scratched the surface of the mines of revolutionary information, which are now so thoroughly, yet so slowly, being made accessible through the classification, indexing, and printing of the wealth of manuscripts by national and state authorities, historical societies, and private enterprise, under the leadership of W. C. Ford, Chief of the Division of Manuscripts, Library of Congress. The true history of those stirring times is yet to be written; and no one has as yet explored the archives with a view to differentiating Wilson's services and isolating them in a connected narrative. But wherever brought to view, they gleam with scintillating brilliancy, and the documents of the period are replete with testimony that the patriotic men of his time knew and valued his worth. It will be through the historian of the future that Americans will fully learn how much they owe to this wonderful man, who in the crisal years of 1775, '76 and '77, though then less than thirty-five years of age, by untiring energy, infinite attention to detail and wise statesmanship, although battling against seemingly overwhelming odds, fostered among the people and in Congress those faint sparks of nationalism, which finally burst into flame and eventually made of the thirteen struggling colonies a great and powerful nation.

The mere journal of the Continental Congress, while he was a delegate, is a startling index of how he labored and of what he did. It discloses that his influence constantly increased, and that gradually he became a member of every committee of vital importance and served on more than did any other delegate. That this is not generally known is no doubt owing to the fact that the indexing of

the journal and other documents of the period is most deficient, necessitating a painstaking reading of the body of the record in order to get even clues to what he did.

Commencing less than three weeks from the day he first took his seat in Congress, May 15, 1775, the journal discloses that he was elected by ballot with Rutledge, Jay, Lee, and Johnson, a member of the committee of five, to consider and report upon an important communication from the Colony of Massachusetts Bay (June 3). He soon became a member of other committees: of three, to draft a communication on behalf of Congress to the inhabitants of Jamaica explaining the situation (June 3); of five, with Philip Schuyler and Patrick Henry, concerning papers on Indian affairs, transmitted by the New York Convention, and to report steps to be taken for securing and preserving the friendship of the Indian Nations (June 16); of five, with John Adams and Rutledge, on printing bills of credit, having plate made and contracting with the engravers (June 23). Within two months he was also unanimously elected with Benjamin Franklin and Patrick Henry, one of three commissioners to prepare articles to pacify the Indians (July 13).

Then in quick succession he became a member of the following committees, *inter alia*: of one, concerning tent supplies, etc., for the army (July 19); of two, with Thomas McKean, to prepare bonds for the Continental treasurers to execute (July 28); of five, to inquire into the state of the Colony of Virginia and to report provisions necessary for its defense (Nov. 10); of three, with Richard Henry Lee and Livingston, to draft a declaration in answer to sundry illegal ministerial proclamations concerning America (Nov. 13); of seven, with Rutledge, John Adams, Livingston, and Franklin, to consider letter from Washington regarding disposal of such vessels and cargoes "belonging to the enemy, as shall fall into the hands of or be taken by the inhabitants of the United Colonies" (Nov. 17); on plans for trade with the Indians (Nov. 23); of three, with Livingston and Jay, Wilson, chairman, on thanks of Congress to the three generals in the Northern Department for their services (Nov. 30); of three, with Jay and Livingston, on letter from Lord Stirling (Dec. 8).

During a part of this time he was away on business of the Colonies and a number of communications from him were received and acted upon by Congress.

In 1776 his labors and influence increased. During that year he served, among other committees, upon the following, the membership of each being usually three or five, though sometimes but two: to take into consideration the state of the Colonies (Jan. 10); to prepare instructions for the officers in the recruiting service, of which Wilson was chairman (Jan. 11); on letter from Washington (Jan. 15); to draft a letter to the Canadians (Jan. 23); to prepare an address to the inhabitants of the United Colonies (Jan. 24); on sundry Indian affairs (Jan. 27); to contract for supplies for prisoners (Feb. 6); concerning support of prisoners (Feb. 6); to examine the capitulations entered into with prisoners and to see that they be observed, to have officers' paroles taken and the orders of Congress punctually executed regarding prisoners (Feb. 7); to contract for rations for troops (Feb. 8); to consider into what departments the Middle and Southern Colonies ought to be formed "in order that the military operations of the Colonies may be carried on in a regular and systematic manner" (Feb. 13); to report the best method of subsisting the troops in New York and the money necessary to send thither (Feb, 13).

On Feb. 13 the committee on the address to the Colonies, appointed Jan. 24, presented its report. This report was written by James Wilson,[1] and although apparently unnoted by American historians, it is one of the most illuminating documents of the pre-Declaration period. James Madison, in a note to a

[1] See same in Wilson's handwriting, "Papers of the Continental Congress," Vol. 24, folios 217–232.

copy of this address, in his note book No. 1, says:

"This address was drawn by Mr. Wilson, who informed the transcriber [Madison] that it was meant to lead the public mind into the idea of Independence, of which the necessity was plainly foreseen by Congress."

This document from beginning to end rings with the spirit of patriotism and there is hardly a line but is worthy of repetition. Space, however, will permit of but a few quotations. At the outset we have a clear enunciation by Wilson of the teachings of George Buchanan[1] of Saint Andrews:

"That all Power was originally in the People — that all the Powers of government are derived from them — that all Power, which they have not disposed of, still continues theirs — are Maxims of the English Constitution, which, we presume, will not be disputed. The Share of Power, which the King derives from the People, or in other words, the Prerogative of the Crown, is well known and precisely ascertained: It is the same in Great Britain and in the Colonies. The Share of Power, which the House of Commons derives from the People, is likewise well known: The Manner in which it is conveyed is by election. But the House of Commons is not elected by the Colonists; and therefore, from them that Body can derive no Authority.

"Besides; the Powers, which the House of Commons receives from its Constituents, are entrusted by the Colonists to their Assemblies in the several Provinces. Those Assemblies have Authority to propose and assent to Laws for the Government of their Electors, in the same manner as the House of Commons has Authority to propose and assent to Laws for the Government of the Inhabitants of Great Britain. Now the same collective Body cannot delegate the same Powers to distinct representative Bodies. The undeniable Result is, that the House of Commons neither has nor can have any Power deriv'd from the Inhabitants of these Colonies."

Then Wilson continues with resistless logic:

"In the Instance of imposing Taxes, this Doctrine is clear and familiar: It is true and just in every other Instance. If it would be incongruous and absurd, that the same Property should be liable *to* be taxed by two Bodies independent of each other; would less incongruity and Absurdity ensue, if the same Offence were to be subjected to different and perhaps inconsistent Punishments? Suppose the punishment directed by the Laws of one Body be death, and that directed by those of the other Body be Banishment for Life; how could both punishments be inflicted? . . .

"The sentence of universal Slavery gone forth against you is; that *the British Parliament have Power to make Laws*, WITHOUT YOUR CONSENT, *binding you in* ALL *Cases whatever*. Your Fortunes, your Liberties, your Reputations, your Lives, every Thing that can render you and your Posterity happy, all are the Objects of the Laws. . . . In Proportion, however, as your Oppressions were multiplied and increased, your Opposition to them became firm and vigourous. . . . Many of the Injuries flowing from the unconstitutional and ill-advised Acts of the British Legislature, affected all the Provinces equally; and even in those Cases, in which the Injuries were confined, by the Acts, to one or to a few, the *Principles*, on which they were made, extended to all. If common Rights, common Interests, common Dangers and common Sufferings are Principles of Union, what could be more natural than the Union of the Colonies?

"Delegates authorized by the several Provinces from Nova Scotia to Georgia to represent them and act in their Behalf, met in GENERAL CONGRESS. It has been objected, that this Measure was unknown to the Constitution; that the Congress was, of Consequence, an illegal Body; and that its Proceedings could not, in any Manner, be recognized by the Government of Britain. . . . To Those, who offer this Objection, . . . we beg Leave, in our Turn, to propose, that they would explain the Principles of the Constitution, which warranted the *Assembly of the Barons at* RUNNINGMEDE, when MAGNA CHARTA was signed, the *Convention-Parliament* that recalled Charles II, and the *Convention of Lords and Commons* that placed King William on the Throne. When they shall have done this, we shall perhaps, be able to apply their Principles to prove the Necessity and Propriety of a Congress."

Turning to another phase of the situation he declares:

"We wish for Peace — we wish for Safety: But we will not, to obtain either or both of

[1] *Vide* p. 5 *supra*.

them, part with our Liberty. The sacred Gift descended to us from our Ancestors: We cannot dispose of it: We are bound by the strongest Ties to transmit it, as we have received it, pure and inviolate to our Posterity. We have taken up Arms in the best of Causes. We have adhered to the virtuous Principles of our Ancestors, who expressly stipulated, in their Favour, *and in ours*, a Right to resist every Attempt upon their Liberties. . . . Our Troops are animated with the Love of Freedom. They have fought and bled and conquered in the Discharge of their Duty as good Citizens as well as brave Soldiers. Regardless of the Inclemency of the Seasons, and of the Length and Fatigue of the March, they go, with Cheerfulness, wherever the Cause of Liberty and their Country require their Service. . . . The Experience and Discipline of our Troops will daily increase. Their patriotism will receive no Diminution: The longer those, who have forced us into this war, oblige us to continue it, the more formidable we shall become.

"The Strength and Resources of *America* are not confined to Operations *by Land*. She can exert herself likewise *by Sea*. Her Sailors are hardy and brave: She has all the materials for Ship-building: Her artificers can work them into Form. . . .

"Possessed of so many Advantages; favoured with the Prospect of so many more; Threatened with the Destruction of our constitutional Rights; cruelly and illiberally attacked, because we will not subscribe to our own Slavery; ought we to be animated with Vigour, or to sink into Despondency? When the Forms of our Governments are, by those entrusted with the Direction of them, perverted from their original Design; ought we to submit to this Perversion? Ought we to sacrifice the *Forms*, when the Sacrifice becomes necessary for preserving the *Spirit* of our Constitution? Or ought we to neglect and neglecting, to lose the Spirit by a superstitious Veneration for the Forms? We regard those Forms, and wish to preserve them as long as we can consistently with higher Objects: But much more do we regard essential Liberty, which, at all Events, we are determined not to lose, but with our Lives. . . We deem it an Honour to 'have raised Troops, and collected a naval Force'; and, *cloathed with the sacred Authority of the People, from* WHOM *all* LEGITIMATE AUTHORITY *proceeds*, 'to have exercised legislative, executive, and judicial Powers.'" . . .

Finally he declares:

"It is in the Power of your Enemies to render Independency or Slavery your and our Alternative. Should we — will you, in such an Event, hesitate a moment about the Choice? Let those, who drive us to it, answer to their King and to their Country for the Consequences. We are *desirous* to continue Subjects: But we are determined to continue Freemen. We shall deem ourselves bound to renounce; and, we hope, you will follow our Example in renouncing the *former* Character whenever it shall become incompatible with the *latter*. . . . That the Colonies may continue connected, as they have been, with Britain, is our second Wish: Our first is — THAT AMERICA MAY BE FREE."

Such are a few excerpts from Wilson's great appeal. An amusing feature of certain portions of this address, and in that respect it is also a masterpiece, is Wilson's effort "to lead the public mind into the idea of Independence" and yet not to over step the instructions of the Pennsylvania Assembly, cited p. 7, *supra*, and for which he seems to have had an official respect, although no doubt a personal contempt, for John Adams records that on May 10, 1776, (June 10)[1] after referring to the maxim that "All government originates from the people," he said:

"We are the servants of the people, sent here to act under delegated authority. If we exceed it, voluntarily, we deserve neither excuse nor justification. Some have been put under restraints by their constituents; they cannot vote without transgressing this line."[2]

But we are anticipating. Among other committees to which Wilson was appointed in 1776 were the following, and of some of which he was the chairman: to report concerning vessels exporting produce of the Colonies and importing ammunition (Feb. 26); on memorial from merchants at Montreal respecting Indian trade (March 4); on letters of marque and reprisal (March 19);

[1] Jefferson has the date correctly, June 10; *vide* p. 1086, Vol. VI, Ford Reprint of Journals of Continental Congress.

[2] *Ibid.*, p. 1075.

to superintend printing of the Journal of Congress (March 21); on letter from General Washington (Apr. 3); respecting Governor Tryon's conduct (Apr. 11); *in re* Indian affairs (Apr. 30); on communication from General Lee (May 20); "to confer with General Washington, Major General Gates, and Brigadier General Mifflin, upon the most speedy and effectual means for supporting the American cause in Canada" (May 23); to confer with the same Generals "and concert a plan of military operations for the ensuing campaign" (May 25); to consider what is proper to be done with persons giving intelligence to the enemy or supplying them with provisions (June 5).

June 13, 1776, the Board of War and Ordinance, composed of five members, was established and Wilson was elected by ballot a member of it. On June 14th, an important report drafted by Wilson concerning sundry communications from General Washington and General Schuyler was presented and favorably acted upon. On June 24th, Congress resolved that a committee composed of a member from each Colony be appointed to inquire into the causes of miscarriages in Canada, and Wilson was named from Pennsylvania. Then came the Declaration of Independence. It is impossible in this brief sketch further to detail Wilson's services in that matter.[1] Following the Declaration, Wilson in 1776 appears as a member of many other committees, among them: to settle a cartel for exchange of prisoners (July 9); to circumvent a conspiracy to liberate prisoners in Philadelphia (July 11); on memorial from Connecticut (July 25); to devise a plan for encouraging the Hessians and other foreigners employed by the King of Great Britain to "quit that iniquitous service" (Aug. 9); on plan of foreign treaties (Aug. 27). On August 1, the young nation, then less than thirty days old, received its first instruction in Nationalism from James Wilson. The problem was under debate in Congress, whether in determining questions each colony should have but one vote or the voting be according to population or in proportion to wealth. Thomas Jefferson, in his holographic notes on the debate, records that Wilson said:

"Taxation should be in proportion to wealth, but representation should accord with the number of free men; that government is a collection or result of the wills of all. . . . It has been said that Congress is a representation of States, not of individuals. I say that *the objects of its care are all the individuals of the states*. It is strange that annexing the name of 'State' to ten thousand men should give them an equal right with forty thousand. This must be the effect of magic, not of reason. *As to those matters which are referred to Congress, we are not so many States, —we are one* large state; we lay aside our individuality when we come here. The Germanic body is a burlesque on government and their practice on any point is a sufficient authority and proof that it is wrong. The greatest imperfection in the constitution of the Belgic Confederacy is their voting by provinces. The interest of the whole is constantly sacrificed to that of the small states. The history of the war in the reign of Queen Anne sufficiently proves this. It is asked: Shall nine colonies put it into the power of four to govern them as they please? I invert the question and ask: Shall two millions of people put it in the power of one million to govern them as they please? It is pretended too that the smaller colonies will be in danger from the greater. Speak in honest language and say the minority will be in danger from the majority, and is there an assembly on earth where this danger may not be equally pretended? The truth is that our proceedings will then be consentaneous with the interests of the majority, and so they ought to be. The probability is much greater that the larger states will disagree than that they will combine."

On September 24, Congress adopted instructions for a treaty with the King of France, which instructions were drafted by Wilson and contained the most minute directions on various points, such as: "Press this hard, but destroy not the treaty for it," etc., etc. Other committees: concerning

[1] *Vide* pp. 6–9.

negroes taken by vessels of war (Oct. 14); to devise ways and means for supplying the treasury with funds (Oct. 14); concerning raising of eight battalions of troops in Maryland (Oct. 23); to recover despatches stolen from General Washington (Oct. 29); "to prepare effectual plan for suppressing internal enemies of America and preventing communication of intelligence to our other enemies" (Oct. 31); concerning the raising of troops in the State of Massachusetts Bay (Nov. 9); chairman of a committee of five "with full power to devise and execute measures for effectually reënforcing General Washington and obstructing the progress of General Howe's army" (Nov. 23); to prepare a translation into the German language of Great Britain's treaty with the Court of Hesse and to pursue means the most effectual for communicating to the Hessians the said treaty (Nov. 27); on communications from General Washington and other Generals (Dec. 20); "to take into consideration the state of the army" (Dec. 26); "to prepare a circular letter to the several United States, explaining the reasons which induced Congress to enlarge the powers of General Washington, and requesting them to cooperate with him and give him all the aid in their power" (Dec. 28).

Wilson also served on numerous committees hearing admiralty appeals. Jefferson records in his notes that in the latter part of July when the proportion or quota of money which each State should furnish to the common treasury was under consideration, an amendment had been proposed that two slaves should be counted as one freeman, whereupon Wilson said:

"Slaves occupy the places of freemen and eat their food. Dismiss your slaves and freemen will take their places. *It is our duty to lay every discouragement on the importation of slaves;* but this amendment would give the *jus trium liberorum* to him who would import slaves."

The year 1777 opened with no relaxation of Wilson's activities; no man was even approaching him in the amount or value of work done. His versatility was only equaled by his application and attention to detail. Reports from his pen were being laid before Congress in rapid succession; he was not only attending to duties there, but he was often away, hurrying from point to point; now negotiating in the then far West with the Indians whose friendship was so essential to the cause of American independence, now conferring in camp with the Revolutionary generals on ways and means the most effective to bring the war to a successful conclusion; yet committee work continued to be thrust upon him. On January 30, 1777, Congress, finding it inconvenient to appoint a committee each time one of the many and rapidly increasing admiralty appeals was to be heard, determined upon a standing committee of five members "to hear and determine" *all* appeals from "the courts of admiralty in the respective states," and directed that the several appeals, when lodged with the secretary of Congress, "be by him delivered to them *for their final determination.*" Wilson was elected the chairman of this committee, which was afterwards known as "the Committee of Appeals," and thus became the presiding officer of the first supreme Federal Court of Appeals having a semblance of permanency, and from which ultimately developed the Supreme Court of the United States. On May 8, 1777, the committee in the *interim* having been enlarged, Congress, declaring that "the standing committee for hearing and determining appeals is too numerous," resolved that "the said committee be discharged and that a new committee of five be appointed, they, or any three of them, to hear and determine upon appeals brought to Congress." Of this new Court of Appeals, James Wilson was also elected the presiding officer.

Other committee work continued to be thrust upon Wilson, although he was also one of five members of the Board of War, as well as on other important standing committees. A few of the new committees to which he was appointed during 1777 are as

follows: on letter from the president of the North Carolina Convention and the memorial from it (Feb. 4); on communication from the Governor of Connecticut *in re* the four New England states (Feb. 5); on conferences with General Gates and General Green (March 21); as to sundry Pennsylvania matters (March 26); on steps for opposing the enemy's attempt to penetrate through New Jersey (Apr. 9); on ways and means to aid the recruiting service and prevent abuses therein (Apr. 12); "on rewards for destroying the enemy's ships of war" (Apr. 14); on "suppressing the spirit of Toryism" in Massachusetts (Apr. 17); on "ways and means for speedily reënforcing General Washington's army" (Apr. 23); "to prepare an address to the inhabitants of the thirteen United States on the present situation of public affairs" (Apr. 30) — this was a committee of three of which Wilson was chairman, as he was of numerous other committees; Wilson, a committee of one, on the memorial of the Commissary General (May 22); to confer with the Pennsylvania authorities concerning complaints from the Indians (May 23); on miscellaneous matters (June 28); to take into consideration the state of Georgia (July 25); to examine certain correspondence of the committee on secret correspondence (Aug. 1); to consider the state of affairs in the Northern Department (Aug. 2); on memorial from John Jay and Gouverneur Morris (Aug. 8); on communication from General Washington and the memorial of the general officers, Wilson chairman (Aug. 11); to define the powers of the Inspector General of ordnance and military manufacturies, Wilson chairman (Aug. 11).

During August, an earnest effort was made by and on behalf of the former Proprietory Governor of Pennsylvania, "John Penn, Esq.," as he is referred to in the Journal of Congress, to prevent his removal to Virginia, as directed by Congress, and he made a personal appeal by letter to be admitted to parole, and this Wilson successfully opposed. Other committee appointments were: to take into consideration the state of the Western frontiers and the Northern Department (Aug. 16); to consider the state of South Carolina and Georgia (Aug. 21); on communication from the Governor of Connecticut (Sept. 8).

Wilson's last act during September, 1777, so far as recorded in the Journal of Congress, was to record his vote on September 11, in favor of a resolution, which Congress adopted, to import twenty thousand Bibles from Holland, Scotland, and elsewhere, into the different states of the Union.

Three days later, September 14, 1777, the relentless arm of an unpatriotic party machine, reaching out from Pennsylvania, deprived the young nation of the services of its ablest champion in Congress, striking down James Wilson in the full vigor of his valiant fight for American liberty, independence, and nationality. It was a blow aimed at the growing prestige of the young Pennsylvanian, who, in addition to his labors in Congress, had voiced an irreconcilable opposition to the miserable makeshift of a Constitution, without counterchecks or balances, which had been adopted by Pennsylvania in 1776, and in the framing of which Wilson had had no part. It was a blow which was intended to destroy one whose growing popularity and influence meant the eventual overthrow of those in Pennsylvania who otherwise considered themselves sufficiently entrenched in power under the Constitution of '76; but it was a blow which struck the nation — a blow from which, perhaps, it could never have recovered had not Wilson, before his removal, succeeded in leading Congress into bestowing almost dictatorial powers upon Washington. With Wilson gone from Congress and the reorganization of the Board of War shortly afterwards, lack of harmony soon developed between the civil authorities and the military, and the friction continued until July 31, 1781, when James Wilson was appealed to by Congress to go to Washington's headquarters with Robert Morris, then the Superintendent of Finance, and Richard Peters, of the Board of

War, "with a view to bringing the military into a better understanding with the civil administration."

The faction in control of the Pennsylvania Assembly which superseded Wilson was the same which had drafted the instructions to him and the other Pennsylvania delegates in Congress in November, 1775, directing opposition to independence. The effort to knife Wilson had long been in contemplation. His friend, Colonel Thomas Smith, afterwards a Pennsylvania member of Congress and subsequently a Justice of the Supreme Court of Pennsylvania, writing concerning Wilson to a mutual friend, General Arthur St. Clair, on August 3, 1776, said:

"He has enemies — created, I sincerely believe, by his superior talent. Their malice has hitherto been impotent, but they are such industrious, undermining, detracting rascals, that I hardly think they will rest until they have got him out, and a ready tool in his place."

Six months later, on January 31, 1777, Wilson's client and close friend, Robert Morris, the "Financier of the Revolution," wrote him:

"I am told our Assembly do not intend you shall be in the new list of delegates. . . . I well know that the honesty, merit, and ability which you possess in so eminent a degree, would not be sufficient pleas against the previous determination of a strong party, for that, I am told, is the case. However, you will enjoy your family and friends at home, if you are deprived of the opportunity of continuing those services to your country, which she *so much needs*, and which, if I mistake not, she *will feel the want of until better men, in better times, shall call you forth again.*"

The party in power did act, and on February 5th elected new delegates superseding Wilson and other signers of the Declaration of Independence, including George Clymer, Benjamin Rush, George Ross, and John Morton. On February 19th, Wilson wrote his friend, General St. Clair, who, like himself, had come from Scotland and between whom there was a close bond of sympathy:

"You have probably heard that I am removed from the delegation of Pennsylvania. I retire without disgust, and with the conscious reflection of having done my duty to the public and to the state which I represented. . . . I am still hurried as much as ever. . . . I shall have more leisure by and by."

Wilson had written St. Clair in July, shortly before the attempt was made to keep "John Penn, Esq.," and his Tory Chief Justice from banishment:

"As to the politics of Pennsylvania, they are not in the situation I could wish. If a regular system was formed between General Howe and the friends of our Constitution, [the Pennsylvania Constitution of 1776], his motions could not have been better timed."

And Washington declared:

"The disaffection in Pennsylvania . . . is much beyond anything you have conceived, and the depression of the people of this state [New Jersey] render a strong support necessary to prevent a systematical submission."

The force of public opinion among the people of Pennsylvania, however, was such that two of those who had been elected declined to serve, and on February 22d, Wilson, with George Clymer, was again returned to Congress. The then dominant party in Pennsylvania bided its time, and seven months later, on September 14, 1777, as stated above, superseded Wilson in Congress, and for more than five years the nation was without his services there. This act, the more the situation becomes known, will serve to deepen the stain which Wilson's removal placed upon those responsible for it, and its consequences, measured by what the nation lost, it is not possible even to estimate. Dr. Benjamin Rush, who served in Congress with Wilson, records of him:

"He was a profound and accurate scholar. He spoke often in Congress, and his eloquence was of the most commanding kind. He reasoned, declaimed, and persuaded, according to the circumstances, with equal effect. His mind, while he spoke, was one blaze of light. Not a word ever fell from his lips out of time or out of place, nor could a word be taken from or added to his speeches without injuring them. He rendered great and essential services to his country in every stage of the Revolution."

Alexander Graydon says of him in his Memoirs:

"He never failed to throw the strongest light on his subjects, and seemed rather to flash than elicit conviction syllogistically. He produced greater orations than any other man I have ever heard."

Wilson could not have been blind to the value of his services, and must have been deeply chagrined at the thwarting of his activities in Congress. He removed to Annapolis, Maryland, where he devoted himself to practice, but yielding to the importunities of friends, he returned after a year and took up his permanent residence in Philadelphia.

He at once threw himself with the vigor and impetuosity of youth into active practice, at the same time rendering valiant service wherever possible to the cause of republican liberty in state and nation. William Rawle, the elder, a leader of "the old Bar," who had declined a proffer of the attorney-generalship of the United States at the hands of Washington, and whose great grandson, former President of the American Bar Association, Francis Rawle, had so prominent a part in arranging the 1906 Wilson Memorial services, in a brief memoir of "the elder Bar" delivered before the Bar of Philadelphia in 1824, said:

"Few of those now present can recollect Wilson in the splendor of his talents and the fullness of his practice. Classically educated, ... his subsequent success in the narrow circle of country courts encouraged him to embark in the storm which after the departure of the British troops agitated the forum of Philadelphia. The adherents to the royal cause were the necessary subjects of prosecution, and *popular prejudice seemed to bar the avenues of justice.* But Wilson and Lewis and George Ross [a signer, with Wilson, of the Declaration of Independence] never shrunk from such contests, and if their efforts frequently failed, it was not from want of pains or fear of danger."

He had helped to organize the Republican Society, which was pledged to unyielding opposition to the Pennsylvania constitution of '76, indeed to such an extent that its members, among whom were the ablest and most patriotic of Pennsylvanians, refused to accept any state office under that constitution, as that would compel them to take an oath to support its vagaries. Alexander Graydon, in his Memoirs, records that it was understood to have been principally the work of George Bryan, the political leader of the party in power, "in conjunction with James Cannon," who was professor of mathematics in the College of Philadelphia, and Graydon adds, "it was severely reprobated by those who thought checks and balances necessary to a legitimate distribution of the powers of government." This man Cannon, who had helped to draft the instructions against independence to the Pennsylvania delegates in Congress in '75 and '76, so far lost his own balance as to declare in a public meeting that "all learning as an artificial restraint on the human understanding he had done with;" and he advised "our sovereign lords, the people, to choose no *lawyers* or other professional characters called educated or learned; but to select men uneducated, with unsophisticated understandings;" and he declared that he "should be glad to forget the trumpery which had occupied so much of his life." Such were some of the men who had removed Wilson from Congress and whom he was now engaging in the bitterest political struggle Pennsylvania has known from that day to the present, which is placing it on a very high plane of bitterness. Yet these men were not Tories, although their narrow vision often led them, in their antagonism to Wilson and his party, to acts which injured the cause of the United States more than any Tory had the power to do. In the announcement of the Republican Society published in March, 1779, Wilson declared:

"While we oppose tyranny from a foreign power, we should think ourselves lost to every sense of duty and of shame were we tamely to acquiesce in a system of government which in our opinion will introduce the same monster so destructive of humanity

among ourselves. Such a system we conceive the constitution framed by the late convention to be."

The relentless fight was waged not only during the Revolution, but until Wilson triumphantly achieved Pennsylvania's endorsement of the United States Constitution in 1787 over the venomous opposition of the Bryan-Cannon adherents, and with his own hand wrote a new constitution for Pennsylvania, which was adopted by the people in 1790. In 1779 the Bryan faction realized the growing strength of Wilson's opposition and determined to break his influence, if possible. He had speedily built up a large and lucrative practice. The leading business men and merchants of Philadelphia were his clients, among them Robert Morris. The emission of bills of credit by Congress had inflated the currency, and the price of food stuffs rose; the public mind was inflamed against Morris and other merchants, and an attempt was made, through a committee appointed at a town meeting, to regulate the prices at which flour and other commodities should be sold. Morris and other merchants refused to sell on terms dictated to them, and some of the flour was used to supply the French fleet. This was early in October, 1779, and Wilson was at that time Advocate-General for France, as well as counsel for Morris. Those opposed to him had little difficulty in working up a popular sentiment against him, particularly as he had but recently been of counsel for Roberts and Carlisle accused of treason, and had obtained the acquittal of a number of persons tried for that crime. Could any mob ever be made to understand that a man might be an ardent patriot and at the same time discharge his duty as a lawyer to a client unjustly charged with an unpopular crime? On the night of October 3, 1779, signs were posted throughout Philadelphia, threatening Robert Morris, Wilson, and others. The following afternoon a mob assembled, armed with muskets and revolvers, and after marching for several blocks through the city, headed towards Wilson's residence, at the southwest corner of Third and Walnut streets. An eyewitness records that General Thomas Mifflin went to the leader in the march, and it is said warned him that if they attacked Wilson's house they would be fired upon, and "one of the men in the ranks struck or pushed him [Mifflin] with his musket." In the meantime a large group of Wilson's friends assembled at his residence to protect him, including Robert Morris and George Clymer, both signers of the Declaration of Independence, General William Thompson, General Thomas Mifflin, Major Francis Nichols, Captain James Campbell, John Lawrence, Samuel C. Morris, and a score or more of others. Their only ammunition consisted of some cartridges with which Clymer and Nichols had filled their pockets at the arsenal at Carpenter's Hall. And it is a fact worthy of note that in Wilson's house at this time there was a majority of those who eight years later represented Pennsylvania in the United States Constitutional Convention. Shortly before the arrival of the mob, an eyewitness who had no part in the contest, records that he talked with Wilson and that he said that he "had good information he was intended to be taken up and that he was determined to defend himself." The mob finally attacked the house, and a fusilade of shots resulted. Captain Campbell, of Wilson's old county, Cumberland, and who had been married but a week, was killed in the house, and General Mifflin was wounded by a bayonet thrust. One or two of the mob were also killed and many wounded. A disinterested eyewitness, in a personal letter, wrote that "although the whole of the mob was preparing to fire, I think a third single shot was fired before any return of fire was made from Mr. Wilson's house." Finally, led by Major Lenox, a part of the First City Troop, which had been held in rendezvous for the emergency, galloped up and charged the mob, dispersing it after the front door had been battered in. Had it not been for this rescue,

as a modern Pennsylvania historian [Stone] so truly declares, "the soil of Philadelphia would have been stained with the blood of three signers of the Declaration of Independence." It was this same organization, still containing the best blood of Philadelphia, which served as a guard of honor to Wilson's remains at the time of their recent re-interment in Philadelphia, and which since Washington's day guards the person of the President of the United States when visiting Philadelphia. The controlling faction in Pennsylvania promptly issued, on October 6, 1779, a proclamation, declaring *inter alia:*

"The undue countenance and encouragement which has been shown to persons disaffected to the liberty and independence of America by some whose rank and character in other respects gave weight to their conduct, has been the principal cause of the present commotion. . . . We . . . require all those who marched down from the Common in hostile array to the house of James Wilson, Esq., and also *all those who had previously assembled in the said house with arms or otherwise* immediately to surrender themselves to . . . some justice of the peace, *who is directed to commit them to prison*, there to remain until examination can be had."

In response to this extraordinary proclamation, Wilson, who had been defending his life in his own house — his castle — and the other men with him, boldly appeared before their enemies in the Supreme Executive Council, which had issued the proclamation, —and were held in bail for trial in such modest sums as £10,000 for Wilson, £20,000 for his brother-in-law, £10,000 for Richard Peters, later a member of the Board of War, and afterwards the distinguished United States judge, etc., etc. Some embarrassment was caused when Colonel Gressel, of the Continental Army, appeared, but the Council avoided it by declaring that "he had used his influence to prevent bloodshed," and allowed him to go without bail, with the request that he attend later on "as evidence." These farcical proceedings were finally ended by an act of amnesty to all concerned, passed March 13, 1780, by the same body which a few months before had remonstrated concerning Washington's military plans. The curtain, however, was not rung down until the president of the Supreme Executive Council had secured an appropriation of £360 to replace a sword hanger which he had lost at the time of the riot, for it seems that he had appeared on the scene.

So ended this criminal effort permanently "to remove" James Wilson from the scene of his worldly activities. "But," as is recorded in Sanderson's "Lives of the Signers of the Declaration of Independence," "like the mammoth of the lakes, he opposed a dauntless front to the storm and shook off the shafts that were hurled for his destruction."

During the *interim* of five years when Wilson was not in Congress, he performed an inestimable service to the cause of American independence by maintaining the closest relations with America's great ally, France. The minister plenipotentiary of Louis XVI, M. Gerard, on September 15, 1779, formally notified Congress that he had constituted James Wilson Advocate-General of the French nation, "in order that he may be charged with all the causes and matters relative to navigation and commerce." The commission issued to Wilson on June 5, 1779, the appointment, having been made on that date, recites:

"The daily discussions which arise in the different parts of United America, relative to commerce and navigation, and the establishment of fixed regulations on those subjects, forming an object of great labor and importance, which can only be confided to a person versed in the laws, and internal administration of America, as well as in the rights of man, and the general usages of commerce; and the experience and talents, of which Mr. James Wilson has afforded so many brilliant proofs, making him worthy of this nomination, we hereby appoint and constitute him, subject to the good pleasure of the King, and until his decision be known, Advocate-General of the French nation, in the thirteen United States."

This commission was duly confirmed by the King of France on February 18, 1781, "in consideration of the zeal and attach-

ment which he had on various occasions shown towards the subjects of his Majesty." The arduous duties of the office demanded close attention, and much study and research were necessary. "I fancy myself," said Wilson, "in the situation of a planter who undertakes to settle and cultivate a farm in the woods where there has not been one tree cut down nor a single improvement made." By the treaty between the American government and France, which Wilson had played so important a part in initiating, commercial relations and a consular system were to be established, and it devolved upon Wilson early in 1780 to draft the agreement on behalf of France. In doing so, he outlined the jurisdiction and procedure of courts in international commercial causes, as well as an elaborate consular system, which later became the basis for that of the United States. Wilson's preparations for these duties were referred to in a letter to John Holker, then the Counsel-General for France, in which Wilson said:

"A close study of the laws of England and of this country for upwards of thirteen years, and an extensive practice during the greatest part of that period, entitle me to say that I am not altogether unacquainted with them. I have given attention to the laws of nations. Since I have been honored with the nomination to be Advocate-General, I have directed my studies to the laws and ordinances of France; but I am very deficient in the knowledge of them. Nothing but intense application, for a considerable time, can make me so much master of them as to do justice to the office, or to derive reputation from it to myself. As the trade of France with the United States shall increase, the number of processes, in which the kingdom will be interested, and of cases, in which law opinions must be given, will increase in proportion. To give a safe opinion upon any particular point, however simple or detached it may appear, requires a general knowledge of the laws from which it ought to be deduced."

Some difficulty subsequently arose concerning Wilson's compensation, and he wrote M. Gerard declining a proposition which had been submitted, saying:

"It would in other respects reduce me to a degree of dependence to which I will not submit. You know my sentiment from the beginning was that my salary and my commission should be dependent only on the King."

Finally, after a long correspondence, the Duke de Luzerne informed Wilson, in April 1782, that it was not the intention of the King to attach an annual salary to the office of Advocate-General, although this was a condition of the agreement originally made with the French minister. Instantly Wilson's spirit of patriotism was aroused, and, although notifying the French minister that he would not have accepted the office except upon the terms that a salary be annexed, he added:

"But, sir, I am a citizen of the United States, and feel what I owe to France. While the King is making such generous and such expensive efforts in behalf of my country, every service of which my situation and circumstances will admit is due to him. With the greatest cheerfulness, therefore, I will, during the war, give my best service and assistance, in the line of my profession and practice, concerning such matters as the ministers and consuls of France will do me the honor of laying before me."

"Finally," as Wilson's biographer, in Sanderson's "Lives of the Signers," with biting sarcasm remarks, when writing in 1824, "after several years of labor, Mr. Wilson received from his most Christian Majesty, in November, 1783, the princely remuneration of — ten thousand livres;" yet Wilson had the conscious satisfaction of knowing, which to a man of his patriotism and character was worth more than dollars and cents, that he had fulfilled a mission which largely helped to maintain throughout the Revolution the close bond of friendship between the United States and France, so essential to the former; for without France's cordial friendship those "enemies from within," the Tory party, might have triumphed, even though the British could not by force of arms.

(*To be continued.*)

PHILADELPHIA, PA., January, 1907.

Our Contributors.

In this number we print the third installment of Mr. ALEXANDER'S manuscript on James Wilson, with the earlier numbers of which our readers are familiar. The frontispiece is made up of a series of portraits showing the different stages of the ceremonies attending the disinterment and re-burial of the remains of the Supreme Court Justice last November. The latter group in particular contains many figures eminent in American history. Those who are interested in identifying them should notice our advertisement on the first advertising page after the text of this number.

FRANK B. KELLOGG is the senior member of the well-known firm of Davis, Kellogg & Severance of St. Paul, which has attained national reputation through its services as special counsel for the Government in some of the most important cases of recent years. Mr. Kellogg is just now in the public eye as counsel for the Interstate Commerce Commission in the investigation of the Harriman railroads.

In our April number of last year we printed a brief letter from DONALD RICHBERG outlining the plan which he elaborates in his contribution to this number. FREDERICK N. JUDSON replied to the suggestion in our December number. Mr. Richberg, who has previously been a contributor to our pages, is a recent graduate of Harvard Law School, now in practice in Chicago.

STANLEY E. BOWDLE is a member of the firm of Workum & Bowdle of Cincinnati, who occasionally takes time to enliven the profession with his satire. His article we publish is the second of a series which we hope to be able to print hereafter.

JOHN B. DAISH is counsel for the National Hay Association, and also the auditor of its official organ, "Freight." He is, therefore, especially qualified to deal with the difficult subject of which he treats. He has previously contributed other articles on his specialty.

We publish in this number a further installment of the Decisions of Squire Attom, by HERBERT J. ADAMS of Davenport, Iowa.

1. THE DISINTERMENT AT EDINGTON
2. BODY LYING IN STATE
3. CITY TROOP AWAITING BODY
4. PROCESSION LED BY CHIEF JUSTICE FULLER
5. BANNERS OF THE SONS OF THE REVOLUTION
6. THE BURIAL

The Green Bag

Vol. XIX. No. 3 BOSTON March, 1907

JAMES WILSON — NATION BUILDER[1]

By Lucien Hugh Alexander

PART III

DEVOTION to private practice and service as Advocate General for France by no means occupied all of Wilson's energies during the years immediately following his retirement from Congress in 1777. In 1773 he had been elected Professor of English Literature in the College of Philadelphia, afterwards the University of Pennsylvania, and he held this chair until 1779, when he became a trustee of the University. As such he continued to serve during the remainder of his life, with such associates as Benjamin Franklin, Governor Thomas Mifflin, Bishop White, and Francis Hopkinson. During a period of ten years he fought vigorously in the forum of the law for the legal rights of the institution, for in 1779 an attempt was made by the party in power in Pennsylvania to confiscate its estates and to amend and alter the charter. Wilson was eventually successful, and secured the adoption of an act in 1789, branding the attempt to rob the University of her rights and privileges as "repugnant to justice, a violation of the Constitution of this Commonwealth and dangerous in its precedent to all incorporated bodies." This victory, due entirely to Wilson's superior reasoning powers, was won on the same line of argument which nearly a third of a century later enabled Webster to win the Dartmouth College case.

Commencing in 1779 Wilson maintained an active correspondence, often in cipher, with the American Commissioners to France, and, among his other activities, devoted himself to a study of finance. He was in search of a remedy for the instability of the currency which had resulted from the emission by Congress of millions in paper money, with which to pay the troops and carry on the war. He became convinced that a national bank was a necessity, and a manuscript copy of a plan for such a bank, dated January 25th, 1780, is among the *Wilsonia* in the archives of the Historical Society of Pennsylvania, as also extensive notes and "Observations on Finance." Among these papers is a "plan for establishing the Bank of the United States," dated May 26th, 1781, also various papers concerning the Bank of North America, and a draft of a "Petition for a Second Bank." Again we find notes "on the case of the two banks," as well as others entitled "Considerations on the Bank," and "Case of the bank and remarks concerning banks and banking," also on "Progression of Society and improvement in the United States and Pennsylvania, particularly with reference to public credit and bank credit," etc.

He was closely associated with Robert Morris in organizing the Bank of North America, of which he was appointed a Director by Congress on December 31, 1781, during the period he was not a delegate. He became counsel for the bank, as he already was for Morris. Ever after in his speeches, when questions of finance were under discussion, he was an earnest advocate of a sound currency and against the repudiation of the obligations of state or nation. Indeed, he became an authority in

[1] Continued from the February Number.

finance, as he was on so many other subjects, and as soon as he was returned to Congress, January, 1783, proposed the plan of general taxation, which was adopted February 12, 1783. His brilliant and unanswerable argument on the power of the Congress under the Articles of Confederation to incorporate the Bank of North America is referred to, and quoted from at some length by the writer, in *The North American Review* at pp. 986–987 of Vol. 183 (Nov., 1906), and will not be repeated here. No student of Wilson or of the many problems resulting from the claims of state rights doctrinaires can afford not to read the argument [1] in full.

James DeWitt Andrews of the New York and Chicago Bars, and editor of the last edition of Wilson's works,[2] says this argument "stands as a constitutional exposition second to no constitutional argument or opinion delivered before or since. Indeed it not only embraced every ground or argument which Marshall was called upon to treat, but it assumed and defined precisely the position which was necessarily taken in the Legal Tender decisions."

It should be added that Hamilton's great report to Washington — Hamilton's chief claim to fame — of February 23, 1791, on finance, was founded on this argument by Wilson, and it is possible that the historian of the future will be able to trace an even closer connection on the part of Wilson with that powerful document. However this may be, all that can now be said is that a manuscript copy of Hamilton's report, forty-six pages in length, is among the Wilson papers in the Historical Society of Pennsylvania.

During this time Wilson's party in Pennsylvania was gradually but surely overcoming that of George Bryan and the other adherents to the Pennsylvania constitution of 1776. On May 23, 1782, Wilson was unanimously elected by the Supreme Executive Council, Brigadier-General of the militia. Although not in Congress, he was maintaining an active interest in national affairs and exerting every energy on behalf of the colonies in the bitter conflict with the mother country. How active we may judge from the fact that it was to him General Arthur St. Clair wrote from "Headquarters, October 19, 1781," congratulating *him* (Wilson) on the surrender of Cornwallis at Yorktown. Said St. Clair:

"I was lucky enough to get up in time to take my command, which is no less than the whole American troops, and to have been in the trenches during the operations. *I most heartily congratulate you* upon this event which cannot fail to have the most beneficial consequence, and reflect great lustre upon our arms."

In 1781 Pennsylvania sought Wilson's services as counsel in the contest with Connecticut over the latter's claims to the lands of the "Wyoming settlement," and a commission was issued to him under the Great Seal of the state. The case was won in December, 1782, before an arbitration court, appointed by Congress, sitting at Trenton, as a result of Wilson's skillful handling. Wilson's brief is still preserved. In 1784 an attempt was made by Connecticut to re-open the contest and the then President of Pennsylvania's Supreme Executive Council, John Dickinson, writing the Pennsylvania delegates in Congress, referred to Wilson's "professional knowledge and laborious preparation for the late trial," at the same time asserting that the attempts of Connecticut to re-open the case "are very extraordinary and are to be opposed with the most persevering vigilance." The matter dragging, Wilson then in Congress, having taken his seat January 2, 1783, reported to President Dickinson, on February 26, 1785:

"The controversy respecting the settlements at Wyoming depends before Congress in a very disadvantageous state of suspense. I think that both the interests and the honor of Pennsylvania require that a speedy and explicit decision be had upon

[1] See Wilson's Works (Andrews' Edition), Vol. 1, pp. 549–577.

[2] Callaghan & Co., Chicago, 1896.

the complaints and representations which have been made against her."

Finally, Wilson was able to report a complete victory for Pennsylvania. We also find him informing President Dickinson in 1785 that "in some conversation I have had with Governor Clinton [of New York], the actual running and marking a line between Pennsylvania and New York has appeared to us to be a measure of much importance to both states and which in the present juncture may be easily accomplished," — and it was, as a result of Wilson's initiative.

He was also called upon to assist the Attorney General of Pennsylvania in several other cases of importance. One of them, Commonwealth *versus* Matlack, indicated that political conditions had decidedly changed in Pennsylvania, for Matlack had been a member of and the Secretary of the Supreme Executive Council at the time of the issuance of the proclamation in the matter of the attack on Wilson's house in 1777, which disturbance is known in Pennsylvania history as the "Fort Wilson Riot."[1] On June 2, 1784, the Supreme Executive Council adopted a resolution that Wilson be requested to assist the Attorney General in the de Longchamps case and it appearing that he had not acted, another resolution to the same effect was adopted on June 25, 1784, and this double effort to secure his aid proved successful. James Wilson's far-seeing mind, however, was not confined to intellectual activities alone, for on October 31, 1783, he submitted a proposal to the Assembly of Pennsylvania to build "a bridge over the river Delaware at the Falls of Trenton," which was favorably received.

In 1784 he was not a delegate to the Congress, but in that year he published his celebrated address to the citizens of Philadelphia. He was again returned to Congress in April, 1785, also in November, 1785, and was continued by successive re-elections until the adoption of the United States Constitution. Space will not permit of an examination of Wilson's many and invaluable services in Congress during the trying years following the treaty of peace with Great Britain, during which time the lack of cohesive force in the Articles of Confederation became so evident and the flame of nationality burned so low. But Wilson, realizing the necessity for one great nation on the western shores of the Atlantic, never lost the faith and courage that was within him. When Robert Morris, angered by the attacks made upon him, resigned as Superintendent of Finance, it was Wilson who pleaded with him and succeeded in getting him to remain in charge of this branch of the public service, then, as now, so vital to the public welfare.

The Articles of Confederation had been agreed to by Congress and ratified by the states *after* Wilson's removal in 1777,[1] and they lacked that power to make a nation which was characteristic of every national document which received Wilson's touch. We may well imagine, from all we know of Wilson, that had he shaped the Articles of Confederation into final form, they would not have possessed the inherent weaknesses they did. Finally, the Constitutional Convention was decided upon, and the year 1787 found James Wilson a delegate from Pennsylvania, and fully equipped by learning, experience, temperament, and personal influence for the great work that lay before him and the other creative intellects of the time — the making of the Constitution of the United States, to the end that republican government might be firmly established in America, and a sure foundation built for the mighty nation then slumbering *in embryo*. No man in America had greater forensic powers than Wilson, save perhaps Patrick Henry, who, imbued with local and bereft of national pride, had declined to serve as a Virginia delegate to the Constitutional Convention. Combined with Wilson's powers of oratory, there was

[1] *Vide* pp. 106–107 *supra*.

[1] *Vide* p. 104 *supra*.

organized knowledge based not only upon deep philosophic study and profound historical research, but upon vast practical experience in the affairs of government.

No one can read Madison's, King's, or Yates' minutes of the Convention, without being impressed by the fact that Wilson's intellect, to a greater extent than that of any other man's, dominated the proceedings of the Convention. The great principles of republican government, which were finally crystallized into form in the Constitution, he held constantly as beacon lights before the members of the Convention. He was on his feet more frequently than any other delegate, excepting one, speaking, in all, one hundred and sixty-eight times, yet the contemporaneous records of the proceedings show that he never rose for the mere sake of talking, but only when it was necessary to give direction to the trend of thought. When views were being expressed consonant with his theories of government, and there seemed no doubt but that the Convention was in accord therewith, he would sit a silent spectator, intently watching, but always on guard against a departure from correct principles, and ever ready to battle for them at the slightest intimation of a variance therefrom. In the great battles of the Convention, he was ever in the forefront, contending with all the powers at his disposal for the nation's life. Space will not permit of more than a cursory glance at his services in the Convention.[1] In the index to *The Documentary History of the Constitution of the United States*, as recently published by the government, seven and a half columns of fine print are taken up in merely indicating the topics he discussed. However, a brief summary of his work in the Convention will not be out of place:

He desired the executive, legislative, and judicial departments to be independent of each other. He wished to guard the general government against the encroachments of the states, yet he desired the preservation of the state governments, and stood like a rock against all those who would have abolished them, declaring on June 19, according to the minutes of Chief Justice Robert Yates of New York:

"I am (to borrow a sea phrase) for taking a new departure, and wish to consider in what direction we sail, and what may be the end of the voyage. I am for a national government, though the idea of federal is, in my view, the same. With me it is not a desirable object to annihilate the state governments, and here I differ from the honorable gentleman from New York [Hamilton]. In all extensive empires a subdivision of power is necessary. Persia, Turkey, and Rome under its emperors, are examples in point. These, although despots, found it necessary. A general government, over a great extent of territory, must in a few years make subordinate jurisdictions. Alfred the Great, that wise legislator, made this gradation and the last division, on his plan, amounted only to ten territories."

He contrasted the Virginia and New Jersey outline plans for the Constitution, and brought light out of the darkness. He argued that the separation from Great Britain did not make the Colonies independent of each other, yet he did not think the individuality of the states incompatible with a general government. He proposed that the executive should consist of but one person, and advocated the election of the President through electors elected by the people, as an alternative to having him selected by Congress. To the latter plan he was unalterably opposed, declaring that he "would agree to almost any length of time for the service of the President, in order to get rid of the dependence which must result" from an election by Congress, and he presented the plan of an electoral college as a compromise. He objected to an executive council, but urged a council to consist of the President and the Supreme Court, with a veto power over the acts of the legislative branch, coupled

[1] Those interested are referred to McLaughlin's able analysis, entitled "James Wilson and the the Constitution," *Polit. Sc. Qr.*, March, 1897.

with the proviso that a two-thirds vote in the Congress might pass an act over the veto of either the President or Court, and a three-fourths vote where both were opposed. It was his preference that the President should be elected by the direct vote of the people. He advocated a provision for the impeachment of the President, but opposed his removal by Congress on application of the states, for it was a fixed principle with him that the national government derived its powers and authority solely from the people of the nation, and not from the states, — these he considered to be merely the artificial creations of the people for the purposes of government, — the units into which the nation must necessarily be divided for purposes of internal police and local self-government:

"The judiciary ought to have an opportunity of remonstrating against projected encroachments on the people, as well as on themselves. It has been said that the judges, as expositors of the law, would have an opportunity of defending their constitutional rights. There was weight in this observation; but this power of the judges did not go far enough; laws may be unjust, may be unwise, may be dangerous, may be destructive and yet may not be so unconstitutional as to justify judges in refusing to give them effect. Let them have a share in the revisionary power and they will have an opportunity of taking notice of those characters of a law and of counteracting by the weight of their opinions the improper views of the legislature."

He thought the power of the President to pardon should exist before conviction. He urged the election of senators directly by the people, and proposed to divide the Union into senatorial districts; he advocated six years as the senatorial term; opposed the equal vote of the states in the Senate, and thought the number of senators should be in ratio to the population; he objected to state executives filling vacancies in the Senate, and disapproved of the Senate being united with the President in the power of appointment, as well as to its being separately convened. He urged the election of representatives by the people, and advocated proportionate representation of the states in Congress; he pointed out that voting by states was submitted to originally by the Continental Congress "under a conviction of its impropriety, inequality, and injustice." He advocated the same proporton of representation in both houses, and thought annual elections of representatives desirable. He opposed payment of senators and representatives by the states, declaring that "the members of the national government should be left as independent as possible of the state governments in all respects." He was against the constitution fixing the amount of compensation, asserting that "circumstances would change and call for a change of amount." He suggested the number of freemen and three-fifths of the slaves as the ratio of representation, but considered the admission of slaves into the ratio a matter of compromise. According to Madison he argued thus, as to slaves:

"Are they admitted as citizens — then why are they not admitted on an equality with white citizens; are they admitted as property — then why is not other property admitted into the computation? These were difficulties, however, which he thought must be over-ruled by the necessity of compromise."

And in the Pennsylvania Ratifying Convention he argued:

"After the year 1808, the Congress will have power to prohibit such importation [*i.e.* of slaves] notwithstanding the disposition of any State to the contrary. I consider this as laying a foundation for banishing slavery out of this Country; and though the period is more distant than I could wish, . . . it is with much satisfaction I view this power in the general Government, whereby they may lay an interdiction on this reproachable trade. . . . It was all that could be obtained. I am sorry it was no more; but from this I think there is reason to hope that yet a few years, and it will be prohibited altogether."

He was of opinion that a quorum in Congress should not be less than a majority

of the whole. He urged that the journal of Congress should be published; and it may be pertinent while on this point to remark that as a member of the Continental Congress he had been opposed to secret sessions, asserting that the people of the Union had a right to know what their deputies were doing. He desired a provision in the Constitution, declaring that the contracts of the Confederation would be fulfilled, and advocated a guarantee to the states of republican institutions, and of protection from foreign and domestic violence. He objected to a prohibition against taxing exports. His professional pride caused him to regard a provision in the Constitution forbidding *ex post facto* laws as wholly unnecessary; he declared that "the insertion of such a thing, will bring reflections on the Constitution and proclaim that we are ignorant of the first principles of legislation or are constituting a government that will be so." He strongly opposed a proposition to allow states to appoint to national offices. He doubted if the writ of *habeas corpus* should ever be suspended, and desired an absolute prohibition on the states relative to paper money, and a guarantee against laws interfering with the obligation of contracts.

He urged that the territorial rights of the United States and of the individual states should be left by the Constitution *in statu quo*, asserting that he "knew nothing that would cause greater or juster alarm then the doctrine that a political society is to be torn asunder without its own consent." He demanded a provision that Congress should have power to declare the effect which judgments obtained in one state should have in another, and asserted that without such power, each state would be in the same position as independent nations are. He urged that the House of Representatives should be united with the Senate in making treaties, declaring that "as treaties are to have the operation of laws, they ought to have the sanction of the laws also." He objected to a two-thirds vote in the Senate on treaties, because it would put it "into the power of a minority to control the will of a majority," and showed that, in case of an existing war, "if two-thirds was necessary to make peace the minority may perpetuate war against the sense of the majority."

He opposed the appointment of Judges by Congress and proposed that the appointments should be made by the President. He urged a national judiciary and argued that the admiralty jurisdiction should be given to the national government exclusively, "as it related to cases not within the jurisdiction of particular states." He desired the Judges to remain in office during good behavior and opposed a provision permitting their removal by the President on application of the Senate and House of Representatives, declaring that "the Judges would be in a bad situation if made to depend on any gust of faction which might prevail in the two branches of our government." He thought unanimity among the states unnecessary in order to put the new Constitution into operation. Madison records that Wilson took occasion early in the convention to lead it "by a train of observations to the idea of not suffering a disposition in the plurality of states to confederate anew on better principles, to be defeated by the inconsiderate or selfish opposition of a few states." He hoped the provision for ratifying would be put on such a footing as to admit of such a partial union, with a door open for the accession of the rest. He desired the new Constitution to be ratified by a majority vote of the people and of the states. According to Wilson's theories, future amendments should be adoptable by a majority vote of the people, but, on it being moved that no amendments should be binding until consented to by all the states, he proposed that two-thirds only should be necessary, and being defeated in this immediately advocated three-fourths as the next best thing attainable and secured it.

After the great principles and much of the mechanism of the new government had

been tentatively agreed upon, a committee of five "on detail" was elected *by ballot* to draft the Constitution, and Wilson was chosen on this committee, and by some he is reputed to have been its chairman. Among the most treasured possessions of the Historical Society of Pennsylvania is a draft for the Constitution in Wilson's handwriting.

It is not practicable in the limits of this sketch to follow Wilson through the varying phases and the shifting scenes of the Constitutional Convention, and we can better and in more condensed form catch a glimpse of his theories of government by quoting, even if but briefly, his own words as expressed after the Consitituton was a completed whole. Fortunately, Wilson's principal speeches in the Pennsylvania Convention, called to consider the question of ratifying the Constitution, were recorded stenographically, and are accessible in *Elliot's Debates*, and Stone and McMaster's invaluable work, *Pennsylvania and the Federal Constitution*. These speeches by Wilson, and one by Chief Justice Thomas McKean, who was also a delegate to the ratifying convention, were considered of such intrinsic value that they were published in London in 1792, in a book of one hundred and fifty pages, all but fifteen being devoted to Wilson's arguments, *sub nomine* "COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES OF AMERICA, *in which are unfolded the principles of free government and the superior advantages of republicanism demonstrated.*"

Wilson's views are luminous — more luminous, it is not too much to say, than those of any man who has written or spoken since his day; and it is not strange that it is so, for he was at the fountain source of our nation, and had a broader, deeper, and more comprehensive grasp of the principles upon which our governmental institutions are founded than any of his compatriots. For not even Madison, Rufus King, Hamilton or Randolph were possessed of as profound a knowledge of theories and conditions as was Wilson — none of them had been trained in such institutions as St. Andrews, Glasgow, and Edinburgh, or had had such master minds as had Wilson to direct their educations; and none had had more practical experience in the affairs of government than this marvelous man, then at forty-five, in the full vigor of his prime.

It was from the "Commentaries" that that discriminating constitutional historian, James Bryce, the present British Ambassador to America, gained his insight into Wilson's theories of government, causing him, in his great masterpiece, *The American Commonwealth*, to declare Wilson to be "in the front rank of the political thinkers of his age" and "one of the luminaries of the time to whom subsequent generations of Americans have failed to do full justice." Bryce, however, does not stand alone among historians in paying high tribute to Wilson; Bancroft, Hildreth, Fisk, Cooley, McLaughlin, Hart and a host of others all proclaim his greatness. Former President of the American Bar Association, Simeon E. Baldwin, now President of the American Historical Association, says of him:

"*He was the real founder of what is distinctive in our American jurisprudence*, and his arguments for the reasonableness and practicability of international arbitration were a century ahead of his time."

John Marshall Harlan, Senior Justice of the Supreme Court of the United States, declares that Wilson's "labors in the cause of justice and constitutional liberty were not surpassed in value to the country by those of anyone who served the public during the same period of our history."

The late United States Judge, Henry W. Blodgett, stated that he "had it direct from Stephen A. Douglass that the statutes of the First Congress were written by Judge Wilson, and that they were so clear that no contest had ever arisen on account of any ambiguity of their language."

Judson Harmon, Attorney General of the United States in Grover Cleveland's Cabinet, asserts that "no man of his time better

deserves grateful remembrance than James Wilson."

Alton B. Parker, the last candidate of the Democracy for the presidency refers to him as "the man who laid the corner-stone of constitutional interpretation in this country upon deep and solid foundations," and adds:

"As the result of his labors and those of John Marshall and Joseph Story and their associates and successors, there has been perfected a system of jurisprudence, which is the most original, as it promises to be the most imposing monument of our national ideas and institutions."

Justice of the Supreme Court of the United States, William H. Moody, when the Nation's Attorney General, declared that Wilson, "exercised an influence in the convention which equaled, if it did not surpass, that of any other man," and that:

"He sought a government with sufficient power to perform the duties of a nation, and in constructing it was controlled by a few great principles clearly understood and tenaciously pursued. Recognizing that the ultimate sovereignty rested with the people of the United States, he desired a government whose powers should proceed directly from them and operate directly upon them; a government which in truth should be *of* the people, *by* the people, and *for* the people. . . . He was a believer in democracy and in nationalism, — the first man, I believe, in all our history who united the two opinions. . . . He appreciated the proper relations of the two governments, state and national, each entrusted with its own supreme powers, to each other and to the people who created both, and how, through the judiciary, the limits upon their powers, imposed by the Constitution could be made effective. He left the deep impress of his design upon the work of the convention. When it was done he had mastered its great outlines and was ready to expound and defend them. With the keen vision of a seer, he discerned that the structure of the Government was destined for the ages, for vast territories and uncounted millions."

With these ringing words of patriotism, Justice of the Supreme Court of the United States, Edward D. White, of Louisiana, closed his tribute at the Wilson Memorial and Interment services:

"As I stand here, a participant in these ceremonies commemorative of the placing of all that remains of James Wilson to rest in the bosom of his adopted mother, this great commonwealth of Pennsylvania, my mind turns not to extol his virtues but rather lifts itself up to that Wise and All-Merciful Ruler who holds in the hollow of His hands the destinies of peoples and nations, with the supplication that these ceremonies may enkindle in all our hearts a keener purpose to preserve and perpetuate the government which our fathers gave us. Not a government of a great and stolid bureaucracy; not a government of infirmity in national power; not a government destructive of the rights of the states; not a government of the sordid few to the detriment of the many, or of the many to the destruction of those inalienable rights of life, liberty, and property upon which our civilization depends. Not any or all of these, but the government of the Constitution, a government of liberty protected by law, which affords the substantial hope that civil liberty may not pass away from the face of the earth."

And now, for more than one hundred years, that civil liberty for which Wilson strove and struggled, has not only been perpetuated on the American Continent, but has been extending over the world in precisely the way Wilson foreshadowed at the close of one of his masterful arguments for the Constitution in the Pennsylvania Ratifying Convention, — that of December 11, 1787:

"By adopting this system, we shall probably lay a foundation for erecting temples of liberty, in every part of the earth. It has been thought by many, that on the success of the struggle America has made for freedom, will depend the exertions of the brave and enlightened of other nations. — The advantages resulting from this system will not be confined to the United States; it will draw from Europe many worthy characters, who pant for the enjoyment of freedom. It will induce princes, in order to preserve their subjects, to restore to them a portion of that liberty of which they have for many ages been deprived. It will be subservient to the great designs of Providence, with regard to this globe; the multiplication of mankind, their improvement in knowledge, and their advancement in happiness."

James DeWitt Andrews, chairman of the American Bar Association's Committee on Classification of the Law, sums up Wilson's creative work under three heads:

"I. *Contributions to Jurisprudence Proper:* He stated the true theory of jurisprudence, and enunicated the American conception of Law and Right. He showed the necessity for a system of legal education, and presented an outline or juristic encyclopædia.

"II. *Contributions to International Law:* His conceptions of the Law of Nature and of the Law of Nations are just and modern; his divisions of the subject correct and scientific. His views on the exercise of Remonstrance now obtain, as do his views on Intervention, on Mediation and on Arbitration.

"III. *Contributions to Constitutional Law:* He published to the world the principles of the Declaration twenty-three months prior to July 4, 1776, and asserted the unconstitutionality of acts of Parliament over the American Colonies. He affirmed that the Colonies, by their union, formed a nation, and was the first to expound the doctrine of inherent national power. He maintained that a charter is a contract, and also that a legislative grant constitutes a contract. He expressly upheld the doctrine of national expansion. He declared the right of the federal government to incorporate national banks and asserted its power to make paper money a legal tender.

"Wilson thus anticipated the most important measures of the Government and the most important decisions of the National Supreme Court."

But the end is not yet. That profound student of our history, John Bach McMaster, declares:

"I believe Wilson to be the most learned lawyer of his time. As a statesman, he was ahead of his generation in foresight. *Many of the great principles of government advocated by him, we, as a nation, are only beginning to apply.*"

We should never forget that every great decision by John Marshall was foreshadowed by James Wilson, the nation-builder. Fifteen years before Marshall wrote the opinion in Marbury *versus* Madison declaring a law repugnant to the Constitution to be void, and thirty years before his equally potent decision in McCullough *versus* Maryland, Wilson had clearly enunciated the doctrine. On December 1, 1787, in one of his speeches in defense of the Constitution, he declared:

"Under this constitution, the legislature may be restrained and kept within its prescribed bounds by the interposition of the judicial department. This I hope, Sir, to explain clearly and satisfactorily. I had occasion on a former day to state that the power of the constitution was paramount to the power of the legislature acting under that constituton. For it is possible that the legislature, when acting in that capacity, may transgress the bounds assigned to it, and an act may pass in the usual *mode* notwithstanding that transgression; but when it comes to be discussed before the judges, when they consider its principles, and find it to be incompatible with the superior powers of the constitution, *it is their duty to pronounce it void;* and judges independent, and not obliged to look to every session for a continuance of their salaries, will behave with intrepidity and refuse to the act the sanction of judicial authority." [1]

Did space permit, it would be profitable to quote at length Wilson's profound elucidation of the principles of republican government, but to do so would require many scores of pages. He was determined that the American people should have a Constitution which would be a true transcript of their national life and place them before the world a nation, and not a mere confederacy of jarring states. He stood against the idea of sovereignty in the states and declared that the sovereignty was solely in the people. The *real* battle must have been fought in that little "Committee of Detail," composed of five members, which drafted the Constitution into concrete form. The changing of a few words here and there would have altered the fundamental principles upon which our nation now exists. He had his convictions, he saw the situation as it existed, and with prophetic vision he also saw the future, — he knew what the Constitution ought to be,

[1] "Commentaries on the Constitution" (English Edition), p. 12.

he made up his mind what it must be and — made the thing happen, crushing opposition with irresistible force.

He was the antithesis of such patriots as Patrick Henry, who were controlled by local interests and narrow considerations of policy, and who lacked Wilson's broad and comprehensive grasp of fundamental principles. Patrick Henry, in his powerful oration against the adoption of the Constitution in the Virginia Ratifying Convention, with his analytical mind went to the heart of the issue, yet his words show the same misconception of first principles which control so many in our day. He asked:

"What right had they to say, *We, the people?* My political curiosity, exclusive of my anxious solicitude for the public welfare, leads me to ask, who authorized them to speak the language of *We, the people*, instead of *We, the states? States* are the characteristics and the soul of *a confederation*. If the *states* be not the agents of the compact, it must be one *great, consolidated, national government of all the states*. . . .

"The fate of America may depend upon this question. Have they said, *We, the states?* Have they made a proposal of a compact between *states?* If they *had*, this would be a confederation; it is, otherwise, most clearly a *consolidated government*. The whole question turns, sir, on that *poor little thing*, the expression, *We, the people*, instead of *the states* of America." [1]

How different were Wilson's views, as expressed in the Pennsylvania Ratifying Convention.

"I view the states as made *for* the People as well as *by* them, and not the People as made for the states; the People, therefore, have a right, whilst enjoying the undeniable powers of society, to form either a general government, or state governments, in what manner they please; or to accommodate them to one another; and by this means preserve them all; this, I say, is the inherent and unalienable right of the people."

Then, after quoting from the Declaration of Independence as an authority, he declared:

"State sovereignty, as it is called, is far from being able to support its weight. Nothing less than the authority of the people could either support it or give it efficacy. . . . My position is, sir, that in this country the supreme, absolute, and uncontrollable power resides in the people at large; that they have vested certain proportions of this power in the state governments; but that the fee-simple continues, resides, and remains with the body of the people."

Wilson has also left with us these golden words of wisdom and of warning, containing an even more trenchant statement of his doctrine:

"The people of the United States must be considered attentively in two very different views — as forming one nation, great and united; and as forming, at the same time, a number of separate states, to that nation subordinate, but independent as to their own interior government. This very important distinction must be continually before our eyes. *If it be properly observed, everything will appear regular and proportioned: if it be neglected, endless confusion and intricacy will unavoidably ensue.*"

Wilson, as a result of his battle for the people, was attacked with all the virulence of political bitterness. He was called an "aristocrat," "The Caledonian," "Jimmy," "Jamie," and, with Thomas McKean, Chief Justice of Pennsylvania, was burned in effigy at Carlisle, Pennsylvania, with this inscription "*James de Caledonia*" fastened to his coat. But at last, triumphing over every obstacle, he was successful in securing from the convention, mainly as a result of his own abilities, the immortal Constitution; securing, practically entirely by his own efforts, its ratification in Pennsylvania; and securing, very largely as a result of his arguments scattered broadcast throughout the states, its adoption as the fundamental law of the land in 1788. *Thus did James Wilson achieve his second great mission in America.*

(To be concluded)

PHILADELPHIA, PA., February, 1907.

[1] Wirt's "Life of Henry," pp. 267–271.

A DETAIL FROM THE TRUMBULL PAINTING OF THE SIGNERS OF THE DECLARATION OF INDEPENDENCE (JAMES WILSON IS THE CENTRAL FIGURE).

The Green Bag

Vol. XIX. No. 5 BOSTON May, 1907

JAMES WILSON — NATION BUILDER [1]

By Lucien Hugh Alexander

PART IV

BY the time the United States Constitution was ratified in 1788, James Wilson had triumphed over his political enemies and had become the leader of the dominant party in Pennsylvania, then the most important state in the Union; yet his rule was a sway of reason, resulting from universal recognition of his abilities as a leader of men and moulder of public opinion. William Findley, one of his most aggressive opponents in the Pennsylvania ratifying convention of 1787, wrote that Wilson was "considered as the most able politician in the state." His commanding influence is strikingly illustrated by the words of the leader of the opposition to the ratification of the United States Constitution, who finding the Pennsylvania convention, as the result of Wilson's arguments, determined to ratify it, moved that the objections of the minority, including a series of articles in the nature of amendments, be spread on the records. Wilson, opposing, demanded that the motion be reduced to writing, whereupon the leader of the opposition replied:

"Indeed, sir, I know so well that if the honorable member from the city (Mr. Wilson) says the articles shall not, they will not be admitted, that I am not disposed to take the useless trouble of reducing my motion to writing, and, therefore, I withdraw it."

When the Constitution was finally ratified by the number of states necessary to put it into operation, a great celebration was held in Philadelphia, July 4, 1788, which included a procession of a character never equalled since, with floats representative of the various vocations and trades of the people, and upon one of which sat the Judges of the Supreme Court of Pennsylvania. This float, as described by Francis Hopkinson, was in the form of a large eagle, drawn by six horses, and upon it was the Constitution framed and fixed on a staff, crowned with the cap of liberty, the words THE PEOPLE in gold letters being on the staff immediately under the Constitution. In the procession each of the thirteen states was represented by a distinguished citizen, and James Wilson personified Pennsylvania. He was selected to deliver the oration [1] at Independence Hall, and it is said 20,000 people assembled to hear him. The oration was effervescent with the spirit of the time and the exultation resulting from the victory of the Constitution and faith and hope in the future. With the vision of the seer, he foreshadowed the development of America:

"The commencement of our government has been eminently glorious; let our progress in every excellence be proportionably great. It will — it must be so. What an enraptured prospect opens on the United States! . . . . Lowing herds adorn our valleys; bleating flocks spread over our hills; verdant meadows, enameled pastures, yellow harvests, bending orchards, rise in rapid succession from east to west. . . . Commerce next advances in all her splendid and embellished forms. The rivers and lakes and seas are crowded with ships. Their

[1] Continued from the March number.

[1] For same in full see Wilson's Works (Bird Wilson edition, 1804) vol. III, pp. 299–311.

shores are covered with cities. The cities are filled with inhabitants. . . . Peace walks serene and unalarmed over all the unmolested regions — while liberty, virtue, and religion go hand in hand, harmoniously protecting, enlivening, and exalting all! Happy country! May thy happiness be perpetual!"

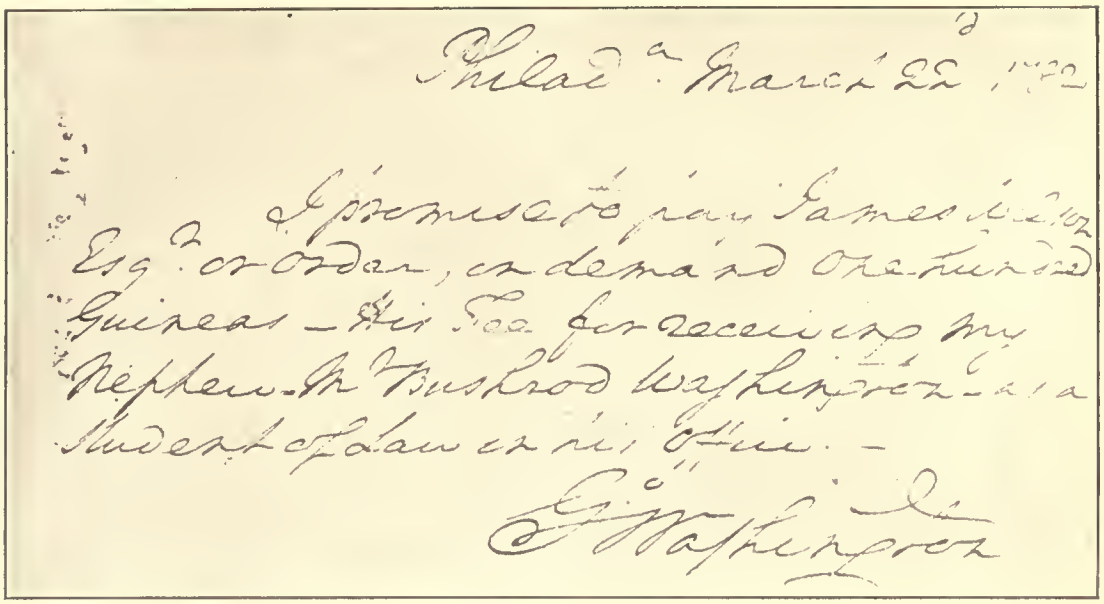
After tracing the rise and fall of governmental institutions from the days of antiquity, he exhorted the citizens of the young nation to frugality, temperance, and the highest civic duty, and painted in a powerful word picture the fall of Rome as a warning to the infant republic. "A progressive state," he asserted, "is necessary to the happiness and perfection of man." He abjured the people to protect the ballot and conscientiously to discharge their electoral duty, declaring:

"Of what immense consequence is it then that this primal duty should be faithfully and skillfully discharged! . . . You will forgive me, I am sure, for endeavoring to impress upon your minds, in the strongest manner, the importance of this great duty. It is the first concoction in politics. . . . Let no one say, that he is but a single citizen, and that his ticket will be but one in the box. That one ticket may turn the election. In battle every soldier should consider the public safety as depending on his single arm; at an election every citizen should consider the public happiness as depending on his single vote."

It is not strange that it was to a man of such mental grasp and moral caliber that George Washington, who had learned to know and understand Wilson during the early years of the Continental Congress, should have insisted in 1782 that his nephew Bushrod Washington should go for instruction in the law. Long years after, in 1822, Bushrod Washington, then a Justice of the Supreme Court of the United States, wrote that his father had sent him to Philadelphia in the winter of 1781–82 with a view to the study of the law, and that General Washington, happening to be in the city, undertook to superintend the necessary arrangements for his establishment; and he adds that although James Wilson "required from his students a much higher fee than was usually paid to the other gentlemen of the law, the General unhesitatingly overruled the intention I expressed to him of entering some other office on account of that difference, by arguments strongly indicating the high opinion he entertained of" James Wilson, and in the same communication Mr. Justice Washington spoke of Wilson as "a sincere friend of the General." George Washington gave his personal note to Wilson for one hundred guineas "for receiving my [his] nephew Mr. Bushrod Washington as a student of law in his office." This document is of such historic interest that a *facsimile* reproduction, with Wilson's receipt endorsed, is here inserted through the courtesy of Hon. Hampton L. Carson, former Attorney General of Pennsylvania, in whose historical collection it now is.

On August 7, 1790, the trustees of the College of Philadelphia, afterwards the University of Pennsylvania, as the result of the suggestion of Charles Smith, Esq., son of the Provost, and formerly a student in James Wilson's law office, appointed a committee of three, of which Wilson was one, to consider the propriety of establishing a law professorship, and one week later they submitted an outline plan, prepared by Wilson, for a course of law lectures. It is still preserved among the Wilson papers in the Historical Society of Pennsylvania. It is so clear and so applicable to present day conditions that we here reproduce the essential portions:

"The object of a system of law lectures in this country should be to explain the Constitution of the United States, its parts, its powers, and distribution, and the operation of those powers; to ascertain the merits of that Constitution by comparing it with the constitutions of other states, with the general principles of government, and with the rights of man; to point out the spirit, the design, and the probable effects of the



Philad.a March 22d 1782

I promise to pay James Wilson Esq.r or Order, on demand One hundred Guineas — this Sum for receiving my Nephew Mr Bushrod Washington as a Student of Law in his Office. —

G. Washington

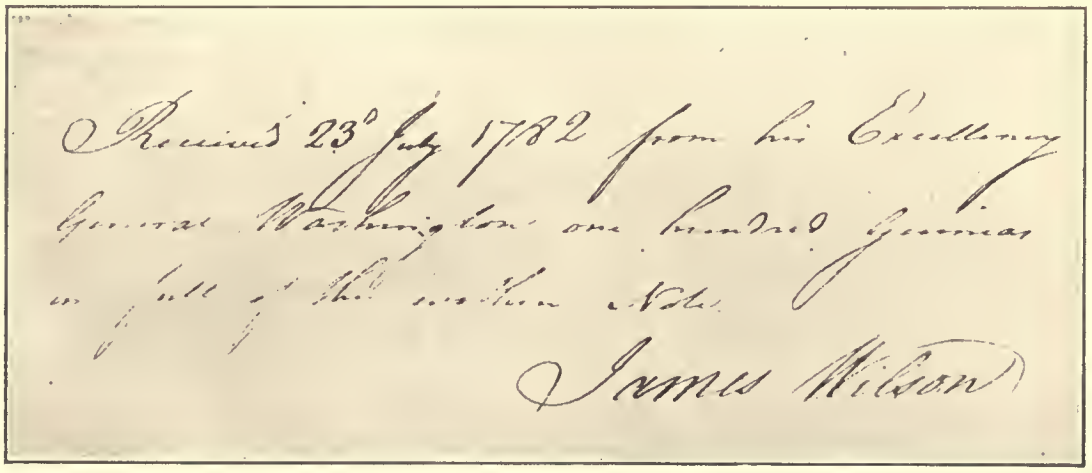
GEORGE WASHINGTON'S NOTE

laws and treaties of the United States; to mark particularly and distinctly the rules and decisions of the federal courts in matters both of law and practice.

"To examine legally, critically, and historically the constitutions and laws of the several states in the Union; to compare those constitutions and laws with one another, and with the general rules of law and government; to investigate the nature, the properties, and the extent of that connection which subsists between the federal government and the several states, and, of consequence, between each of the states and all the others.

"To illustrate the genius, the elements, the origin, and the rules of the common law, in its theory and in its practice; to trace as far as possible that law to its fountains, to the laws and customs of the Normans, the Saxons, the Britons, the ancient Germans, the Romans, and perhaps in some instances the Grecians.

"Under this head it is to be observed,



Recvd 23d July 1782 from his Excellency General Washington one hundred Guineas in full of the within Note

James Wilson

JAMES WILSON'S RECEIPT

that the common law, in its true extent, includes the law of nations, the civil law, the maritime law, the law-merchant, and the law, too, of each particular country, in all cases in which those laws are peculiarly applicable. All the foregoing subjects of discussion should be contrasted with the practice and institutions of other countries. They should be fortified by reasons, by examples, and by authorities; and they should be weighed and appreciated by the precepts of natural and revealed law."

To this man, James Wilson, jurisprudence was a synthetic science, and not a mere group of isolated subjects to be taught independently and without a comprehensive presentation of the interdependent and reciprocal relations of its various branches; to him it was also a philosophic ethical science, based on reason and justice, the various subdivisions of which he believed must necessarily be studied as a correlated whole for a proper comprehension of the particular parts.

The proposed law course was established to consist of twenty-four lectures per annum, the fees to be paid by each pupil not to exceed ten guineas, and James Wilson on the 17th of August, 1790, was unanimously elected by the trustees by ballot to the chair created, and thus became the first professor of law in America. The initial lecture was delivered on the 15th of December, 1790, in the presence of President Washington and many distinguished guests, including his cabinet, members of Congress, the judges of the national and state courts, and the executives, as well as legislative bodies, of both Pennsylvania and Philadelphia. At the conclusion of the lecture, the degree of LL.D. was conferred upon him. Many ladies were present, among them Mrs. Washington and Mrs. Alexander Hamilton, and Wilson alluding to the ladies, facetiously remarked that he had never before addressed such "a *fair* audience." Invitations had been issued by Mr. Justice Wilson — for he was then senior Justice of the Supreme Court of the United States — to the President and his Cabinet, the members of Congress, etc., etc., and the *Pennsylvania Colonial Records* show that the Supreme Executive Council of Pennsylvania formally resolved to attend in a body. The lectures are included in *Wilson's Works*, a second edition of which was published in 1896[1] by James DeWitt Andrews, LL.D., who so truly says in his introductory note:

"Would you trace the history of popular governments, you will find the whole outline traced by the master hand of Wilson in these lectures, prepared especially to instruct the American student as to the difference between the institutions which had before existed and the political system of law and government which exists in the United States. . . . In one respect Wilson's Works are remarkable. It is in this: each fundamental principle is in every instance traced to its source, whether it shall be a principle enunciated by Socrates, Aristotle, Cicero, Gaius, Puffendorf, Locke, Grotius or Hobbes, Descartes or Hume, Vattel or Domat, who may have written upon some proposition or problem of the law or government."

There is no clearer or more satisfactory exposition anywhere of the basic principles of our system of jurisprudence and government than Wilson enunciated in these lectures and in the luminous arguments concerning the Constitution, which have fortunately been preserved to posterity, and which as the years go on, and Wilson's real worth becomes fully appreciated, are destined to be held in the highest esteem.

Wilson's earliest biographer, Robert Waln, Jr., writing of him in Sanderson's *Lives of the Signers*, a quarter of a century after his death, described him as "about six feet in height, erect, or rather, if the expression may be allowed, stooping backward." He also says:

"His person was dignified and respectable; and his manner a little constrained, but not ungraceful. His features could not be called handsome, although they were far from disagreeable; and they sometimes bore the appearance of sternness, owing to his extreme nearness of sight."

[1] Wilson's Works, Callaghan and Co., Chicago.

Apropos of this last remark, his friend Thomas Smith, a member of the Continental Congress, in a letter speaks of his looking through his spectacles,[1] "like a surveyor through a compass," adding jokingly, for the letter was addressed to Wilson, "with a good-natured smile upon your countenance, so that all the house might see what excellent and white teeth you have." The disinterment of Wilson's remains, at which the writer was present, disclosed that the last intimation had substantial foundation in fact; that the occlusion of the upper and lower dentures was remarkably perfect; and that the lower jaw, while well proportioned and not objectionably obtruding, was unusually long and massive, with the chin very broad and square, all betokening that strength and determination of character which, in Wilson, were such dominant traits. The remnants of the coffin showed the inside measurement to have been six feet one inch in length. His wealth of hair still retained the bright auburn hue of the typical Scot, and was bound in a cue, after the manner of his time, though in life it was no doubt often well powdered, if we may judge from the snow whiteness of the hair in the miniature,[2] painted from life and reproduced as the frontispiece of the January issue.

The portrait of Wilson by Trumbull in his *The Congress Voting Independence*, now in the possession of Yale University, and in which Wilson's is one of the five full length figures, shows a man of great power and personal vigor, with determination stamped on every line of face and figure. This painting, so superbly engraved nearly a century ago by Durand, and extensively distributed, is far superior to the *replicas*, one in Hartford and the other in the Capitol at Washington, in both of which the portraiture is most defective.

[1] They were very large with wide, heavy frames and are now in the possession of Mr. Israel W. Morris, of Philadelphia.

[2] Now in possession of the Montgomery family of Philadelphia.

William Rawle, the elder, in an address delivered in 1824, declared that Wilson's views on the great questions of the day "were luminous and comprehensive," and that "his knowledge and information always appeared adequate to the highest subject, and justly administered to the particular aspect in which it was presented." He also said:

"His person and manner were dignified; his voice powerful, though not melodious; his cadences judiciously, though somewhat artificially regulated. His discourse was generally of a reasonable length; he did not affect conciseness nor minuteness; he struck at the great feature of the case, and neither wearied his hearers by a verbose prolongation, nor disappointed them by an abrupt conclusion. But his manner was rather imposing than persuasive, his habitual effort seemed to be to subdue without conciliating, and the impression left was more like that of submission to a stern than a humane conqueror."

On the other hand, Dr. Benjamin Rush, who served with him in the Continental Congress and who knew him intimately, declared that "he reasoned, declaimed, and persuaded, according to circumstances, with equal effect;" that "his mind, while he spoke, was one blaze of light;" and that "his eloquence was of the most commanding kind." Francis Hopkinson bore similar testimony in a letter to Jefferson, declaring that "the powers of Demosthenes and Cicero seem to be united in this able orator." Still another contemporary, Alexander Graydon, in his celebrated *Memoirs*, recorded that "he never failed to throw the strongest light on his subjects, and seemed to flash rather than elicit conviction syllogistically," and that "he produced greater orations than any other man I have ever heard"; and his great contemporary, Robert R. Livingston, of New York, wrote to Jefferson that his oratory in the Pennsylvania ratifying convention "combined information, logic, and eloquence with resistless effect." "His voice," records Waln, "was powerful," and "its cadence perfectly modulated."

With all his great abilities and marvelous talents, he had sublime confidence and faith in humanity and in mankind's ability to work out its mission on earth; and like so many men of massive mind, he was possessed of a simplicity of demeanor, indeed to such an extent as to afford "frequent cause of good-humored merriment to his friends," as noted in the sketch of his life in Sanderson's *Lives of the Signers*. Waln also remarked that "Wilson was more a man of books, than of the world."

In his writings and speeches he illustrates or quotes from Plato, Aristotle and Homer, from Cato, Cicero, Cæsar, Brutus and Caligula, as well from Bolingbroke, Bacon, the Bishop of Tours, Bishop Taylor and Berkeley, Bishop of Cloyne, and a host of others, among them, Dr. Robertson, Pope, Addison and Milton. Barbeyrack, Gogeut, Kaims and Puffendorf, Adam Smith, Blackstone, Coke, Yelverton, Justinian, Hadrian, Alfred the Great, Frederick the Great, Solon and Lycurgus, Marcus Antonius, Hodreau, Des Cartes, Beccaria, Heineccius, Hobbes, Locke, Hume, Sully, Lælia, Carew, Baron de Wolfius, Vattel, Domat, Necar, Fortesque, Burlamaqui and so on almost *ad infinitum*.

The celebrated traveler, the Marquis de Chastellux, Major General in the French army, when on his travels in America, 1780–82, was deeply impressed by his wide reading, recording in his notes[1] that Wilson, "a celebrated lawyer," "has in his library all our best authors on public law and jurisprudence; the works of President Montesquieu and of the Chancellor d'Aquessau, hold the first rank among them, and he makes them his daily study."

Waln in his biographic outline of Wilson's life records:

"In private life he was friendly, interesting, and hospitable; amiable and benevolent in his deportment; of strict truth and integrity; and affectionate and indulgent as a husband and father. In a word, his domestic character and conduct were such as, uniformly, to secure the reverence and affection of his family and friends."

Sometime after the "Fort Wilson Riot" in 1779, Wilson moved to Chestnut Street between Fourth and Fifth, later resided at 274 Market Street, and on the 14th of April, 1788, took possession of the house at the Southwest corner of 7th and Market Streets, Philadelphia, in which the Declaration of Independence was written.

On the 14th of April, 1786, he was called upon to mourn the death of his wife, whom he buried in Christ Churchyard, and to whose memory he erected a tablet, describing her as "loved, honored, and lamented by her husband," and by whose leaden casket his own remains were tenderly laid at his reburial on November 22d, 1906. After the lapse of seven years, he in 1793 married Hannah,[1] daughter of Ellis Gray, a merchant of Boston.

There were six children by the first marriage, and by the second a son, who died in infancy. There are no descendants of Judge Wilson now living. One son by the first marriage, Bird Wilson, became a Pennsylvania Judge, in 1802, in a judicial circuit embracing the counties surrounding Philadelphia, and seventeen years afterwards he resigned from the bench to enter Holy Orders.

There are many indications throughout James Wilson's writings that he had strong religious convictions, and it is said that when he resided in Cumberland County, Pennsylvania, he was a trustee of the Presbyterian church there. Soon after coming to America, he published, between 1767 and 1769, with the Rev. William White, afterwards the distinguished first Episcopalian bishop in America, a number of essays entitled *The Visitant*. He was also on terms of close intimacy with the Rev. Dr. William Smith, first Provost of the University of Pennsylvania. He was an active

[1] *Chastellux's Travels* (English translation, London, 1787) Vol. I. p. 224.

[1] Judge Wilson's letter of proposal to Miss Gray is now in the autograph collection of Mr. Simon Gratz, of Philadelphia.

member of the American Philosophical Society, and on July 7, 1789, was elected an honorary member of the Pennsylvania Society of the Cincinnati. He was an associate of Benjamin Franklin, serving with him in many organizations and on numerous committees, and when Franklin was unable to speak in the United States Constitutional Convention, it was to Wilson he sent his manuscript with the request that he would read his views. It was also to Wilson that that brilliant politician and leader of men, Alexander Hamilton, turned for help in the effort to elect George Washington President of the United States, sending him on January 25, 1789, this letter,[1] which has not as yet found a place in any of the many editions of Hamilton's writings:

"A degree of anxiety about a matter of importance to the new government induces me to trouble you with this letter. I mean the election of the President. We all feel of how much moment it is that Washington should be the man; and I aver I cannot think there is material room to doubt that this will be the unanimous sense. But as a failure in this object would be attended with the worst consequences, I cannot help concluding that even possibilities should be guarded against.

"Everybody is aware of that defect in the constitution which renders it possible that the man intended for Vice-President may in fact turn up President. Everybody sees that the unanimity in Adams as Vice-President and a few votes insidiously withheld from Washington might substitute the former to the latter. And everybody must perceive that there is something to fear from the machinations of Anti-federal malignity. What in this situation is wise? By my accounts from the North, I have every reason to believe that Adams will run there universally. I learn that he is equally espoused in Jersey, Pennsylvania, and Delaware and that Maryland is not disinclined to him. I hear of no persons thought of to the South, but Rutledge in South Carolina and Clinton in Virginia. As the accounts of the appointments of electors will satisfy the partisans of those Gentlemen in each of those states, that they will have no coadjutors elsewhere, it seems not improbable that they will relinquish the attempt in favor of their intended candidates. Here then is a chance of unanimity in Adams. Nothing is so apt to beget it as the opinion that the current sets irresistibly towards him. Men are fond of going with the stream. Suppose personal caprice or hostility to the new system should occasion half a dozen votes only to be withheld from Washington — what may not happen? Grant there is little danger. If any, ought it to be run?

"The votes from New Hampshire to Delaware inclusively, and exclusive of New York, are 41, south of Delaware, 32. Here, supposing equal unanimity on each side in a different candidate, the chance is that there will be Eight votes to spare from Adams, leaving him still a majority. Take the probability of unanimity in the North in Adams and of division in the South between different candidates, and the chances are almost infinite in his favor. Hence I conclude it will be prudent to throw away a few votes, say 7 or 8, giving these to persons not otherwise thought of. Under this impression I have proposed to friends in Connecticut to throw away two, to others in Jersey to throw away an equal number, and I submit it to you whether it will not be well to lose three or four in Pennsylvania. Your advices from the South will serve you as the best guide; but for God's sake let not our zeal for a secondary object defeat or endanger a first. I admit that in several important views, and particularly to avoid disgust to a man who would be a formidable head to Antifoederalists — it is much to be desired that Adams may have the plurality of suffrage for Vice-President; but if risk is to be run on one side or on the other can we hesitate where it ought to be preferred?

"If there appears to you to be any danger, will it not be well for you to write to Maryland to qualify matters there?

"Yrs sincerely and affec'ly
"A. Hamilton."

In January, 1789, Wilson was elected at the head of the Pennsylvania electoral ticket, and the deliberations of the first electoral college resulted in George Washington triumphing over Adams and being

[1] In the possession of Mr. Israel W. Morris, of Philadelphia, executor of Wilson's last surviving descendant, a granddaughter, Miss Emily Hollingsworth.

elected first President of the United States. It has been said that James Wilson was Washington's first choice for Chief Justice, but that political reasons resulted in the appointment of John Jay, with James Wilson merely as an Associate Justice.

In making the appointment, President Washington wrote him on Sept. 30, 1789:

"I experience peculiar pleasure in giving you notice of your appointment to the office of an Associate Judge in the Supreme Court of the United States.

"Considering the Judicial System as the chief Pillar upon which our national Government must rest, I have thought it my duty to nominate for the high office, in that department, such men as I conceived would give dignity and lustre to our national character — and I flatter myself that the love which you have to our country, and a desire to promote general happiness, will lead you to a ready acceptance of the enclosed commission. . . ."

The commission is dated the 29th of September, and now hangs in the Law School of the University of Pennsylvania. Wilson took the oath of office on October 5, 1789, and at once entered upon that career which in the course of a few years afforded him the opportunity to write the all potent decision in the case of Chisholm *v.* Georgia, upon which, as has been so truly said, "rests the governmental fabric of the United States."

Wilson believed "Justice to be the great interest of man on earth," that the ministers of the law were the conservators of the liberties of the people; that they should have that same respect for Constitutional restraints which he asserted it to be their duty to demand from and impose upon both the Executive and Legislative departments of the government. Judicial decisions controlled by considerations of policy were to him utterly abhorrent. With these scathing words of denunciation, he warned against them:

"Among all the terrible instruments of arbitrary power, decisions of Courts, whetted and guided and impelled by considerations of policy, cut with the keenest edge, and inflict the deepest and most deadly wounds."

To Wilson there was no No-man's land between the limits of national and state jurisdictions — no vacancies or interferences. He had a broader and more comprehensive grasp of the Constitution than had any man of his time, and certainly none have excelled him since, not even Marshall who was bound and restricted by the limits of the issues before him for adjudication, and who left behind him no great treatise on the Constitution as did Wilson. It is not strange that Wilson should have foreshadowed all of Marshall's great opinions and should have clearly enunciated the most far-reaching constitutional principle John Marshall ever wrote into a decision, and this Wilson did in 1791 in these plain and simple words in his law lecture on the legislative powers of Congress:[1]

"The powers of Congress are, indeed, enumerated; but it was intended that those powers, thus enumerated, should be effectual, and not nugatory. In conformity to this consistent mode of thinking and acting, Congress has power to make all laws, which shall be necessary and proper for carrying into execution every power vested by the Constitution in the government of the United States, or in any of its officers or departments."

Did John Marshall know of Wilson's writings? Did his great colleague, Joseph Story, know? Theoretically it is inconceivable that they did not; but any who are curious enough to look will find Mr. Justice Story's *autograph* copy of *Wilson's Works* (edition, 1804) in the Library of Congress — *in the Congress branch*, under the Supreme Court room in the Capitol.

Wilson, when a Justice of the Supreme Court, acted with courage and fortitude at the time of the insurrection in Pennsylvania, known as the Whiskey Rebellion. Congress had passed an excise law on March 3, 1791. The senators from Pennsylvania

[1] *Wilson's Works*, 1804 ed. Vol. II, p. 181; 1906 ed. Vol. II, p. 59.

were instructed by the Legislature to oppose the law as one "established on principle subversive of peace, liberty, and the rights of citizens." The agents of the National Government sent to collect the excise tax were maltreated and driven away, and United States marshals attempting the service of writs were tarred and feathered. Even Albert Gallatin, afterwards Secretary of the Treasury under Jefferson, was a leader in the opposition to the collection of the tax, serving as secretary of a mass meeting of seven thousand armed insurgents on August 1, 1794. The situation had become most critical, Washington subsequently declaring that many persons in the western parts of Pennsylvania "have at length been hardy enough to perpetuate acts which I am advised amount to treason, being overt acts of levying war against the United States." The Governor of Pennsylvania, General Thomas Mifflin, declined to take the initiative in calling upon the National Government for assistance. Wilson, however, was equal to the emergency, and unflinchingly met the issue on the 4th of August, 1794, by a brief and formal communication to President Washington notifying him:

"In the counties of Washington and Allegheny in Pennsylvania, laws of the United States are opposed and execution thereof obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings or by the powers vested in the marshall of that district."

There he stopped, — he made no recommendation. His statement was all sufficient. Washington promptly acted, and on August 7th, by his proclamation, called upon the insurgents to disperse and retire peaceably to their homes. The warning being unheeded, Washington issued a requisition on the governors of Pennsylvania, Virginia, Maryland, and New Jersey, for fifteen thousand militia and in person accompanied the troops as far as Carlisle. The insurrection was suppressed merely by the show of federal force at the scene of the disturbances. Had Wilson temporized with the situation and lacked the courage to certify the facts to Washington, it is probable the insurrection would have gained such headway as seriously to affect the ability of the national government to suppress it without bloodshed and resultant bitter feeling and resentment towards the Federal authorities.

The climax, however, in Wilson's career came in 1793, when he wrote the all potent and powerful opinion in the case of Chisholm *v.* Georgia,[1] declaring the United States to be a nation, the court standing with him three to two. Speaking of the decision in that case, Judge Cooley, in his lectures on constitutional law, says:

"Justice Wilson, the ablest and most learned of the associates, took the national view and was supported by two others. . . . The Union could scarcely have had a valuable existence had it been judicially determined that the powers of sovereignty were exclusively in the States or in the people of the States severally."

Another able writer, in an article [2] characterizing Wilson as "The Pioneer of American Jurisprudence," declares:

"On the foundation of this decision rests the governmental fabric of the United States. . . . Wilson set to himself the task of answering the question, 'Do the people of the United States form a nation?' This question is illustrated by copious classical, historical, and juridical references, presented with the vivacity of an earnest debater, the answer constituting a thesis in which the broad observations of a scholar, the close analysis of a jurist, and the profound researches of a philosopher are happily united."

Still another,[3] referring to this great decision and Wilson's invaluable services to our nationality as exemplified therein, asserts:

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[1] 2 Dallas, 419.

[2] Professor J. O. Pierce in *The Dial*, Vol. XX, p. 236.

[3] *The Nation*, Vol. LXII, p. 494 (1896).

"The sovereignty of the Union had been recognized, the idea of the state as a subordinate political agency had been formulated — views to be wholly lost sight of, and to be vindicated two generations later by force of arms in a conflict which ended in their complete triumph. One of the earliest heralds of the true constitutional meaning and scope of that great conflict seems to have been Wilson."

The doctrine was thus authoritatively enunciated by the highest tribunal in the land, by a majority vote of one, that we are a nation, and not a mere confederacy of sovereign states. *James Wilson's third great mission in America had been accomplished.*

There is yet a *fourth* — it is yet to be achieved, but it will not be until the spirit of the Constitution as Wilson conceived it and gave it birth, shall pervade the nation; not until there shall be removed, by an application of his doctrine, that "endless confusion and intricacy" with reference to national and state powers, which now exist, and which Wilson predicted would "unavoidably ensue" if the fundamental principles, upon which our dual form of government was established, were not properly observed. That this day will come none can doubt who have faith in the future of the American nation. When it does, Wilson will for the first time rise to his true proportions in the hearts and affections of the American people. He has left with us these weighty words of wisdom and of warning:

"I consider the people of the United States, as forming one great community; and I consider the people of the different states, as forming communities again on a lesser scale. From this great division of the people into distinct communities it will be found necessary that different proportions of legislative powers should be given to the governments, according to the nature, number, and magnitude of their objects.

"*Unless the people are considered in these two views, we shall never be able to understand the principle on which this system was constructed.*" [1]

[1] McMaster & Stone's *Pennsylvania and the Federal Constitution*, p. 316.

At another time he wrote in a holographic letter to George Washington:

"The most intricate and the most delicate questions in our national jurisprudence will arise in running the line between the authority of the National Government and that of the several States. . . . It is probable . . . that neither *vacancies* nor *interferences* will be found, between the *limits* of the two jurisdictions. For it is material to observe, that both jurisdictions *together* compose or ought to compose only *one* uniform and comprehensive system of government and laws." [1]

Elsewhere he asserted:

"Whenever an object occurs, to the direction of which no particular State is competent, the management of it must, of necessity, belong to the United States in Congress assembled." [2]

The thought, which was crystallized into the General Welfare Clause of the Constitution, he expressed thus:

"The states should resign to the national government that part, and that part only, of their political liberty, which, placed in that government, will produce more good to the whole, than if it had remained in the several states." [3]

Still again he declared:

"Whatever object of government is confined in its operation and effects within the bounds of a particular state, should be considered as belonging to the government of that state; whatever object of government extends *in its operation or effects* beyond the bounds of a particular state, should be considered as belonging to the government of the United States." [4]

Such is the Wilson Doctrine.

On August 21,[5] 1798, James Wilson, at the age of fifty-six, died a broken-hearted man, in Edenton, North Carolina, at the home of his friend and colleague on the Bench of the Supreme Court of the United

[1] December 31, 1791 *Washington Manuscripts*, Library of Congress.

[2] *Wilson's Works* (Andrews' ed.) Vol. I, p. 558.

[3] *Wilson's Works* (Andrews' ed.) Vol. I, p. 539.

[4] *Wilson's Works* (Andrews' ed.) Vol. I, p. 538.

[5] Not August 28 as most historians incorrectly have it.

States, Mr. Justice Iredell. He had exchanged circuits with the latter to escape the importunities of avaricious creditors pressing claims, — debts, which Wilson himself said "were originally none of mine."

He had lost his fortune through the failure of many of the same enterprises which wrecked Robert Morris, the financier of the Revolution, and sent that great patriot to a debtors' prison, imprisonment for debt not yet having been abolished in Pennsylvania. The evident fact is that Wilson had such faith in the future development of America, and so keen a desire to hasten it that he put his money, as did many of the great statesmen of the time, into wild land,[1] buying more than he could carry, and all his available assets were swept away.

That Wilson was prompted to make these investments mainly as the result of an earnest desire to help the development of his country, rather than from purely mercenary motives, none can doubt who examine his papers, study his views, and grasp the trend of his mind. Of property he declared:

"Property is not an end, but a means. How miserable, and how contemptible is that man who inverts the order of nature and makes his property, not a means, but an end."

Referring to the future of America, concerning agriculture, he asserted:

"Our strength will be exerted in the cultivation of all the arts of peace. Of these the first is agriculture. . . . On agriculture, therefore, the wealth of nations is founded. Whether we consult the observations that reason will suggest, or attend to the information that history will give, we shall, in each case, be satisfied of the influence of government, good or bad, upon the state of agriculture."

Again he said:

"The wise and virtuous Numa was the patron of agriculture. He distributed the Romans into *pagi* or villages, and over each placed a superintendent to prevail with them, by every motive, to improve the practice of husbandry."

Still again:

"Let us attend a moment to the situation of this country; it is a maxim of every government, and it ought to be a maxim with us, that the increase of numbers increases the dignity, the security, and the respectability of all governments; it is the first command given by the Deity to man, increase and multiply; this applies with peculiar force to this country, the smaller part of whose territory is yet inhabited. We are representatives, Sir, not merely of the present age, but of future times; not merely of the territory along the sea coast, but of regions immensely extended westward. We should fill, as fast as possible, this extensive country, with men who shall live happy, free, and secure. To accomplish this great end ought to be the leading view of all our patriots and statesmen."

With Wilson holding such views as these, we can understand why, as early as 1785, he endeavored to interest financiers in The Netherlands in the development of the vast, unpopulated regions of the United States; and why he himself came to acquire large interests in land companies, and endeavored to promote colonization on a most extensive scale. The men of his time did not have his far-reaching vision, and it is doubtful if they altogether understood his motives. Among the *Wilsonia* in the Historical Society of Pennsylvania, is a holographic manuscript, thirty-five legal pages in length, containing "notes on cultivation of unused land in the United States" and a "Prospectus of an Association for the Promotion of Immigration from Europe." But James Wilson was too far in advance of his time, and through the treachery of supposed friends and through circumstances

[1] An anonymous attack upon the memories of James Wilson and Patrick Henry, extensively printed some months ago, deserves no further notice than this comment. It was traced to its source, and authorities for the assertions demanded, and such as were finally furnished, after repeated demands, not only completely vindicated Patrick Henry, but failed in any way even to implicate James Wilson.

over which he had no ultimate control, many of his plans failed of fruition during his lifetime, and he "fell in the traces" overburdened, laboring for the country he loved and for the advancement of the great principles of civil liberty to which he had devoted his marvelous talents and the best portions of his time, energies, and life.

Such are the landmarks of James Wilson's wondrous career of activity, and they also mark great crisal points in the early history of the American people.

As the years go on, his name will be associated more and more with that of Washington, as it often was during their lifetime. Jefferson relates in his *Ana* that in 1793, at a cabinet meeting, General Knox, the Secretary of War, introduced a cartoon recently printed, entitled "The Funeral of George W—— and James W——, King and Judge," in which the President was represented as placed on a guillotine, and Jefferson records this interesting sidelight on Washington:

"The President was much inflamed; and got into one of those passions when he cannot command himself; ran on much on the personal abuse which had been bestowed on him; defied any man on earth to produce one single act of his since he had been in the government which was not done on the purest motives; [declared] that he had never repented but once on having slipped the moment of resigning his office — and that was every moment since; that by God he had rather be in his grave than in his present situation; that he had rather be on his farm than to be made Emperor of the World; and yet that they were charging him with wanting to be a King."

Wilson was a truer Democrat than Jefferson and a better Federalist than Hamilton, for he founded his entire theory of government on the people, absolutely and irrevocably, and while ardently advocating the upbuilding of the nation, stood like a rock against the abolition of the states, all of which represents not inconsistency but a broad, comprehensive grasp of fundamental principles. His faith in the people was real and sincere, — in his last analysis they were the sole and only hope in a republic. He asserted that under such a government:

"There is a remedy, therefore, for every distemper of government; if the people are not wanting to themselves. *For the people wanting to themselves there is no remedy.*"

Our nation is yet in its infancy, and it is probable that a hundred, three hundred, or five hundred years hence, when the perspective of time shall have adjusted the proportions, two great figures will loom from the Revolutionary period, the one, Wilson's, whose brain conceived and created the nation; the other, Washington's, who wielded the physical forces that made it. While doubtless the affections of Americans will always be centered in Washington as "the father of his country," the world at large will be apt to place one above the other, and as to which will receive the laurel wreath of highest fame will probably depend upon whether at that distant day a man who wielded the physical forces will be deemed equal to the man who swayed the intellectual forces of his time. But however this may be, James Wilson's fame is secure as the greatest intellectual power dominating the nation at its birth, and his services to our people, his doctrines and governmental theories are destined, in the oncoming years, more and more to receive popular recognition; for we live in an age of research, and they cannot escape the attention they deserve. "*Melius est petere fontes, quam sectari rivulos;*" it is better to seek the fountains than to follow the rivulets.

PHILADELPHIA, PA., April, 1907.

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